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LAW EXAMINATION MANUAL.

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LAW
EXAMINATION MANUAL
FOR STUDENTS;

CONTAINING

CONVEYANCING, SCOTS LAW, AND COURT PRACTICE,
IN THE FORM OF TABLES AND ABSTRACTS;

THE LATIN MAXIMS IN BELL'S AND ERSKINE'S PRINCIPLES;

AND

NUMEROUS EXAMPLES OF THE EXAMINATION QUESTIONS.

COMPILED BY

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SOLICITOR SUPREME COURTS.

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PREFACE.

THE great assistance which students in other professions have derived from the use of Examination Manuals, and their continued success, has induced the writer to compile the present work, in the hope that it will prove a useful help to law students who are preparing themselves for examination.

Although written principally for those who may be studying for the Final Law Agent's Examination, it is also intended for the use of all who are reading for class examinations, or degrees in law; and it is hoped that it may supply a much felt want to those who desire to take advantage of the Act of Sederunt of 1886, and to present themselves for examination without having attended the law classes at a University.

The object of the book is not to enable the student in any way to dispense with a careful study of the prescribed Text-Books, but to assist him in his preparation for examinations, by placing before him the subjects chosen, in a clear and easily mastered form, which will be of great use in a revisal of his work, and it is thought that the method adopted is most advantageous for these purposes.

In a work of this description, it is impossible to include the whole of the law to be read for the examination, but the subjects which have been selected are those from which most of the questions are taken, and which can with advantage be condensed into small space, so as to give the student a clear idea of the chief points that he should keep before him for the purposes of

the examination, and he will find many questions which can be answered from a reference to the tables in the book.

The Text-Books recommended for study are :—

Scots Law.—Erskine's Principles, which is the University class-book; and Bell's Principles, which contains the more modern rules of law. In Erskine's Principles attention should be paid to the Notes by Professor Moir.

Conveyancing.—Bell's Lectures, which is the University class-book.

Court of Session Practice.—The Book of Court Practice, by Mr. Coldstream; and the Digest of Practice contained in the Parliament House Book.

Sheriff Court Practice.—The Book of Sheriff Court Practice, by Sheriff Dove Wilson; and a little book by Mr. W. J. Lewis, S.S.C., which contains a summary of most of the work necessary for the examination.

Criminal Law.—Macdonald's Criminal Law. Rarely more than two questions on this subject are given at an examination, and a general reading will suffice.

Generally.—The various Acts of Parliament which in any way change the law of Scotland. These Acts, or most of the important ones, will be found in the Parliament House Book, which all are recommended to procure. The decisions in important cases should also be read, as a question is often put which bears on a recently decided case.

A synopsis of the principal Conveyancing Acts, a list of the Latin maxims to be found in Erskine's and Bell's Principles, and numerous examples of the examination questions, are also given. These questions the reader is recommended to go over carefully, and to answer them without the aid of books, which will enable him to test for himself how far he has mastered the various subjects, will give him confidence, and also serve to show him the class of questions which he may expect to get at his examination.

LAW EXAMINATION MANUAL.

—o—

PRINCIPAL CONVEYANCING STATUTES

AND THE CHIEF ENACTMENTS THEREOF.

Heritable Securities Act, 1845, 8 & 9 Vict. c. 31.

Forms for transfer and discharge of bonds given.

Transfers, etc., of bonds allowed to be recorded.

Writ of Acknowledgment and Notarial Instrument in making up title to bonds introduced.

Infeftment Act, 1845, 8 & 9 Vict. c. 35.

Ceremony of Infeftment abolished.

Instrument of Sasine shortened.

Instrument might be recorded during life of grantee.

Date of recording to be date of infeftment.

Instruments of Resignation *in favorem* abolished.

Service of Heirs Act, 1847, 10 & 11 Vict. c. 47.

Brieves of Inquest abolished.

(Forms) Petitions for Service substituted therefor.

Decree of Special Service to operate as disposition.

~~Liability under~~ Service limited.

Transference of Lands Acts, 1847.

(1) *Feudal*, 10 & 11 Vict. c. 48.

(2) *Burgage*, 10 & 11 Vict. c. 49.

Form of Disposition, Mode of Entry, Constitution of Ancestor's Debt against Heir, and Adjudications thereon shortened.

Forfeiture of Superiorities regulated.

Heritable Securities Act, 1847, 10 & 11 Vict. c. 50.

Short form of bonds given.

Registration thereof allowed.

Use of Notarial Instrument extended.

Crown Charters Act, 1847, 10 & 11 Vict. c. 51.

Procedure in obtaining a Crown Charter shortened and altered.

NOTE.—The Acts of 1847 allowed a reference to burdens or conditions in a recorded instrument.

Titles to Land Act, 1858, 21 & 22 Vict. c. 76.

Instrument of Sasine dispensed with.

Registration of Deeds allowed.

Instruments of Resignation *ad rem* dispensed with.

Clauses of (1) Obligation to infeft, (2) Precept of Sasine, and (3) Manner of holding dispensed with.

Writs of Confirmation, Resignation, and *Clare Constat* introduced.

Clause of Registration in Entails to be equivalent to naming of three cardinal prohibitions.

Use of Notarial Instrument extended to heirs and general disponees.

Titles to Land Act, 1860, 23 & 24 Vict. c. 143.

Provisions in Act of 1858 extended to lands held burgage.

Consolidation Act, 1868, 31 & 32 Vict. c. 101.

It repealed the foregoing Acts, except Infeftment Act, 1845 (§ 6 thereof repealed), and re-enacted their provisions.

It also declared:—

Females may be witnesses.

Heritage may be settled by testament.

Decree of Special Service to vest a personal right in heir.

Heritable Securities to be moveable as to succession.

Inhibition only effectual from recording notice.

Inhibition not to affect *acquirenda*.

Litigiosity to date from recording of notice of action.

Heirship Moveables abolished.

Land Registers Act, 1868, 31 & 32 Vict. c. 64.

Particular Registers of Sasines throughout country abolished, and one General Register established.

Conveyancing Act, 1874, 37 & 38 Vict. c. 94.

Renewal of Investiture abolished.
Personal right to land to vest in heir without Service.
Redemption of casualties provided for.
Mode of making up title to real burdens given.
Prescription (positive) shortened to twenty years.
Conquest abolished.
Certain objections to probative deeds abolished.
Inhibitions to prescribe in five years, unless renewed.
Titles of Trustees, to make up.
Securities on land to transmit against heirs, and in certain cases against disponees.
Completion of title to heritable securities under General Disposition.
Several objections to recorded deeds removed.
Execution of deeds by a Limited Company.
Repeals §§ 11, 62, 125, 127, and 129 of 1868 Act, and alters and repeats their provisions.

Amending Act, 1879, 42 & 43 Vict. c. 40.

Re-enacts § 118 of Bankruptcy Act, 1856.

Amending Act, 1887, 50 & 51 Vict. c. 69.

Liability of Trustees for casualties limited.
Novodamus without Resignation not challengeable.
Decree of Irritancy under 1874 Act not final till extract.
Letters of Administration equal to Will for Notarial Instrument.

GENERAL REQUISITES OF DEEDS.

I. PARTIES.

They must be capable of contracting.

Exceptions.

1. Pupillarity.

Total incapacity. Father is administrator; whom failing, a tutor nominate, or tutor appointed by law. Mother now guardian, along with any nominated, for pupils.

2. Minority.
   Limited incapacity. Father curator; whom failing, minor can choose a curator.
3. Married Women.
   Limited incapacity. Married Women's Property Act of 1881 gave them power to deal with moveable estate and income of heritage.
4. Insanity.
   Capable during lucid intervals. *Curator bonis*, when appointed, bars all right to contract.
5. Facility.
   Deeds can be reduced if lesion used.
6. Drunkenness.
   When it deprives of reason.
7. Interdiction.
   Judicial or Voluntary. Affects only heritage. Deed valid if onerous or rational. *Mortis causa* deeds valid.
8. Aliens.
   Exceptions removed by 33 Vict. c. 14.
9. Mercantile Company must hold lands by Trustees, unless incorporated.

Their consent must be free and deliberate, and contract can be voided by—

1. Error.
   In substantialibus—as to party, or subject-matter, or legal rights, or price. Error in law no ground of reduction.
2. Fraud.
   By collusion, circumvention, concealment of essentials, or misrepresentation. No objection, where party objecting first debars himself by acting on contract, or discovers fraud before entering on contract.

   See 1621, c. 18, as to deeds, defrauding creditors, to conjunct or confident parties. Onerous deeds excepted.

   See 1696, c. 5, as to *voluntary* deeds granted sixty days before bankruptcy. *Nova debita* excepted.

   In hands of *bona fide* third parties, deeds are good.

3. Force and Fear.

Must be sufficient. May be violence to person, or threats of disinheritance, etc.

In hands of *bona fide* third parties, deeds are bad.

II. SUBJECT-MATTER AND CONSIDERATION OF DEED.

Must be lawful.

Exceptions.

1. Pacta Illicita.
2. Contra Bonos Moros.

Melior est conditio possidentis applies. Lawful parts will stand.

3. Restraints on Liberty.

Colliers and Salters; now removed. Restrictions on marriage, or restraint on trade, except within particular locality.

4. Gaming Debts and Wagers.

No action on deeds. *Bona fide* holder of bill granted for gaming can sue by 5 & 6 Geo. IV. c. 41. If bet made through an agent, he can sue his principal.

5. Pacta de quota litis, or deeds interfering with free course of Justice.

Gifts by clients to agents for conducting case. Purchase of subject in dispute by agent. Purchase of appointments.

6. Deeds against Revenue Laws.

Smuggling contracts. Evasion of Income Tax.

7. Deeds against Bankruptcy Laws.

Agreements between bankrupt and creditor. See the Bankruptcy Act of 1856, §§ 150 and 151.

8. Simony.

III. EXTERNAL FORM OF DEED.

Requisites.

1. Paper or Parchment.
2. Ink or Pencil.
3. Book-wise or in Roll.
4. Parties named and designed.
5. Deeds not blank in essentials.
6. Text correct; and erasures, deletions, additions, and interlineations mentioned.

   Erasures in Instrument of Sasine or Notarial Instrument do not invalidate it, if Record is the same, 6 & 7 Will. IV. c. 63. Extended to all deeds by 37 & 38 Vict. c. 94.
7. Essential parts free from doubt.

IV. SOLEMNITIES OF EXECUTION.

The Acts as to the solemnities of execution are:—

1540, c. 117, required (1) Sealing, (2) Subscription, (3) Subscription by notary if granter could not write.

1579, c. 80, required (1) Sealing, (2) Subscription, (3) Subscription by two notaries and four witnesses in presence of each other, if granter could not write.

1584, c. 4, dispensed with sealing.

1593, c. 179, required writer's name and designation.

1681, c. 5, required (1) Subscription of witnesses, (2) their designation in testing clause, (3) that they should know granter and see him subscribe.

1696, c. 15, (1) Deeds might be written book-wise, (2) pages numbered, (3) witnesses' subscriptions on last page only.

19 & 20 Vict. c. 19, dispensed with pagination.

1874 Act. Not necessary to (1) name or designate writer, (2) number pages, (3) name or designate witnesses, if they add designations to signature. One notary and two witnesses for those who could not write.

REQUISITES OF TESTING CLAUSE.

Before 1874 *Act.*	*After* 1874 *Act.*
1. Subscription of parties, or two notaries and four witnesses.	1. Subscriptions of parties, or one notary or justice of the peace and two witnesses.
2. Writer's name and designation.	
3. Subscription of witnesses, and designation of them in testing clause.	3. Subscription of witnesses, but no designation in testing clause if they add designation to their signature.
4. Pagination (up to 1856).	
5. Place and date of subscription.	5. Place and date. Deeds defective in solemnities can be set up by proof.

V. PRIVILEGED DEEDS.

1. Holograph.
   Not necessary to be entirely holograph. Valid without witnesses. Cannot prove its own date as against third parties (except acknowledgments of assignations).
2. Testamentary Writings.
   Though informal, upheld if intention appears. One notary and two witnesses allowed for testament. Minister could act as notary in parish.
3. Writs *in re mercatoria.*
   As orders for goods, guarantees, offers and acceptances of sales, bills, promissory notes, etc. (1) Receive effect though neither holograph nor tested. (2) Prove their own date. (3) Subscription by initials or mark, if usual, sufficient, but not to authorize diligence.
4. Foreign Deeds.
   If subscribed according to law of Scotland, or *lex loci*, except as to Scotch heritage, they are good. If

mortis causa, must have (till 1868) *de presenti* words of conveyance, but an obligation to convey is personal.

5 Joint Stock Companies.

1862 Act, §§ 55 and 64; 1867 Act, § 37; and 1874 Act, § 56. Valid if executed (1) according to 1862 and 1867 Acts, or (2) are sealed and signed by two directors and secretary of company, whether witnessed or not.

VI. DELIVERY OF DEEDS.

Deeds require to be delivered to complete their effect.

Exceptions.

1. Deeds with clause dispensing with delivery.
2. Deeds making alterations on ditto.
3. Testamentary deeds.
4. Deeds by parents to children.
5. Deeds in which granter has substantial interest.
6. Mutual obligations or contracts.
7. Deeds which granter is under an obligation to make.

Equipolents of Delivery.

1. When granter acts on deed as if it were delivered.
2. When deed recorded.
3. Intimation of assignation is sufficient.

VII. ACCEPTANCE OF DEEDS.

Grantee is not bound till he accept deed.

VIII. HOMOLOGATION AND ADOPTION.

1. Voidable deeds can be made good by homologation.
2. Void deeds can be set up by adoption.

IX. *REI INTERVENTUS.*

Consists of the actings by a party, who could resile from a deed, which prevents him from doing so.

ACQUISITION OF RIGHTS.

I. Public Rights cannot be acquired.

Such as, Seas and Shores.
Navigable Rivers and Lakes.
Ferries.
Ports and Harbours.
Highways and Streets.
Fairs and Markets.

Rights of Ferries, Harbours, and Fairs may be acquired by Crown grant.

II. Private Property can be acquired by—

1. *Occupation.*

(1.) Appropriation of things which have no owner.

Except immoveable subjects, which belong to king, moveable subjects which once had an owner, and treasures, royal fishes, etc.

2. *Accession.*

(1.) Accessory follows principal, as house the ground, and *alluvio* the land which receives it.

Except paintings or writings on another's canvas or paper.

(2.) Specification, by persons making new subject from another's materials, the property following workmanship, unless subject can be again reduced.

(3.) Commixtion. (Same rule.)

If proprietor consents to mixture, it becomes common property.

If he does not consent — if indivisible, it becomes common property — if divisible, property remains distinct.

III. Private Property is transferred by—

1. *Tradition.*

(1.) Intention to deliver, and

(2.) Delivery, real or symbolical, or constructive delivery where possession is held through another.

IV. Possession.

1. Natural, by one's own possession.

2. Civil, by possession through another.
   Proves property in moveables, till contrary is shown.
   Bona fide possessor entitled to crop he sows, but not interest on money.
   Mala fide possessor not entitled to either.

TRANSMISSION OF MOVEABLE RIGHTS.

I. ASSIGNATION.

Before 1862.

1. Narrative clause.
2. Consideration clause.
3. Assigning clause.
   Making and constituting the assignee cessioner and assignee.
4. Substituting clause.
   Substituting assignee in place of cedent.
5. Warrandice.
6. Delivery of writs.
7. Registration.
8. Testing.

After 1862.

Old form still competent.

Act of 1862 introduced two forms, one separate, and the other to be written on bond, etc., assigned.

Clauses—

1. Narrative clause.
2. Assigning clause.
   Simple assignation of bond, etc.
3. Testing clause.

II. COMPLETION OF ASSIGNEE'S RIGHT.

1. *Delivery.* 2. *Intimation.*

Intimation, Ways of—

1. By sending debtor copy assignation, and getting acknowledgment thereof.
2. Notarial—by procurator, before two witnesses, delivering copy of assignation to debtor, and taking instruments in hands of notary, who makes notarial certificate of same.

3. Edictal—by procurator, two witnesses, and notary, as above.
4. By notary delivering certified copy assignation to debtor (1862 Act).

Equipolents of Intimation.

1. Acts of a judicial character.
2. Acts of debtor, importing knowledge of assignation.
3. Private knowledge of assignation.
4. Acknowledgment by agent or factor, only in special cases.
5. Letter written to debtor, if receipt by him proved.
6. Presentment of bill, in case of bills.
7. Sasine.

III. ASSIGNATIONS NOT REQUIRING INTIMATION.

1. Assignations operating transfer of their own strength.
   (1.) Adjudication.
   (2.) Marriage.
   (3.) Sequestration.
2. Assignations to debtor himself, or party to whom intimation should be given.
3. Assignations registered for publication.

IV. RIGHTS WHICH CANNOT BE ASSIGNED.

1. Bonds secluding assignees (except onerously).
2. Alimentary rights and salaries of public officers, so far as necessary for support.
3. Rights inferring a *delectus personæ*.
4. Rights not vested in cedent at time of assignation.

EXTINGUISHMENT OF OBLIGATIONS.

Obligations are extinguished by—(1) Payment or Performance, (2) Compensation, (3) Novation or Delegation, (4) Confusion, (5) Discharge, (6) Presumed Abandonment or Discharge, (7) Prescription.

Payment.

By
- True debtor.
- One acting for debtor, or a co-obligant.
- Tutor, trustee, factor, etc., for debtor.
- Stranger (but no right to demand an assignation)

to

True creditor, or his heir, or one administering for him.

1. *Must be* bona fide.
   (Tenant's payment of rent, or feu-duties, or interest on bond, before legal term, not *bona fide*.)
2. *Appropriation.*
   (*a*) Where several debts, creditor can appropriate payment, if indefinite, but not to leave creditor to penal consequences.
   (*b*) Not to disputed debts.
   (*c*) Not to illegal debts.
3. *Evidence of Payment.*
   RULE.—*Unum quodque eodem modo solvitur quo colligatur.*
   Written debt, written evidence.
   Parole debt, parole evidence.
4. *Presumed Payment.*
   (*a*) From three consecutive receipts.
   (*b*) Documents of debt in debtor's hands, but yields to proof.
   (*c*) Physicians' and lawyers' fees.

Performance.

1. By debtor, or any one representing him.
   (*a*) Unless obligation personal.
2. Where obligation personal, it falls by death or incapacity of debtor.
3. Where obligation relates to particular subject, it falls on destruction of subject.
   (*a*) If destroyed by debtor's fault, claim for damage lies.

Compensation.

1. Debts must be of same nature.
   Both due.
   Both liquid.
   Parties must be debtor and creditor, each in his own right.
2. *Partnerships and Partners.*
   (*a*) No concourse generally.
   (*b*) Where company's debt demanded from partner, he can set off debt due to himself.
   (*c*) After dissolution of firm, partners can set off all debts.
3. It must be pleaded, and acts retrospectively to stop interest.
4. *Exceptions.*
   It does not take place in—
   (*a*) Deposits.
   (*b*) Appropriation.
   (*c*) Prescribed debts.
   (*d*) Debt acquired after bankruptcy.

Novation and Delegation.	Confusion.	Discharge.
Novation is new obligation. *Delegation* is new debtor. 1. Not presumed, but must be expressed. 2. Discharges debt. 3. But if old debtor knows of new debtor's insolvency, when creditor ignorant, the old debt subsists.	*Takes place*— 1. When debtor succeeds to creditor. 2. When creditor succeeds to debtor. 3. When creditor and debtor marry, and debt is moveable. 4. When stranger succeeds to both. 5. When creditor has an interest to keep up debt, it is only suspended.	1. Proof is written as to written obligations, and parole as to parole obligations. 2. General discharge includes all debts up to date. 3. Is presumed from three consecutive receipts for periodical payments.

CAUTIONARY OBLIGATIONS.

Proper.

Where the cautioner is bound as such.

Rights of Cautioner.

1. Discussion, only if stipulated for (after 1856).
2. Relief *pro rata* against each other, and total against debtor.
3. Division.

Improper.

Where the cautioner is bound as principal, or joint and several obligant.

Rights of Cautioner.

The rights are renounced as against the creditor, but reserved as to the principal debtor.

I. BOND OF CAUTION.

1. Must be probative deed.
2. Or privileged writ.
3. But good where subscription acknowledged.
4. Good where *rei interventus* on improbative writing, or established by oath on reference.
5. Parole proof only allowed where cautionary obligation is part of a contract on which parole proof legal.

II. DISCUSSION.

Abolished by 1856 Act, unless stipulated for.

1. Debtor must first be exhausted, and everything recovered from him benefits cautioner.
2. Every proper proceeding to exhaust debtor must be taken.
3. Creditor must apply to debt all money or securities recovered from debtor.

III. RELIEF.

1. Cautioners have relief against each other for shares, and against debtor for whole debt. They must intimate distress to debtor before paying.
2. Cautioners must communicate deductions or securities to each other.
3. Where new cautioner introduced at request of debtor, he has rateable relief against others.

   Where introduced at request of cautioners, he has total relief against them.

IV. DIVISION.

Unless matter indivisible.

1. Each cautioner is liable for his portion only, so long as the others are solvent.
2. If he pays, he can demand assignation to debt from creditor.

V. DISCHARGE OF CAUTIONER.

Takes place by—

1. Direct discharge.
2. Discharge of a co-cautioner (1856).
3. Payment of debt.
4. Essential change on obligation.
5. Discharge of debtor (except in sequestration).
6. Giving time to debtor, so as to interfere with cautioner's right of relief.
7. Extreme neglect of legal proceedings against debtor.
8. Giving up funds of debtors without cautioner's consent.

9. Septennial Limitation.

By Act 1695, obligation *ipso facto* falls in seven years. It may be renounced.

Exceptions—

(*a*) Foreign Bonds. (*b*) Bonds *ad fac. prest.* (*c*) When term of payment beyond seven years. (*d*) When bond of corroboration granted. (*e*) When diligence raised within seven years. (*f*) By negotiating. (*g*) By decree against cautioner within seven years. (*h*) Limitation does not apply to relief *inter se* if one has paid whole debt. (*i*) Caution for discharge of an office. (*j*) Judicial caution. (*k*) Bond of presentation.

VI. JOINT OBLIGATIONS.

Co-obligants are bound only for shares.

Exceptions—

1. If obligation bear that money is for use of one, *i.e.* cautionary obligations.
2. If obligants bound as co-principals.
3. If bound jointly and severally, or conjunctly.
4. If obligation is indivisible, or *ad factum prestandum.*

JOINT STOCK COMPANIES.

Are now regulated by the Companies Acts, 1862 to 1886.

1862 ACT.

1. All companies must register unless they are under a Special Act or Letters Patent.

   If more than ten members for banking.

   If more than twenty members for other purposes.

2. Memorandum of Association—

   Signed by seven or more persons.

   (1.) May be unlimited.

   (2.) May limit to unpaid amount on shares.

   (3.) May limit to amounts which each member guarantees to contribute on a winding up.

Contains (*a*) name of company; (*b*) objects; (*c*) place of business; (*d*) capital and liability; (*e*) number of shares.

3. Articles of Association—

When company limited by shares, not necessary.

States particulars of company's capital, powers, and business, and is adopted from 1862 Act.

4. Memorandum and Articles, if any, require to be registered, and a certificate got from Registrar of Companies.

5. Part 2 of Act relates to capital and liability.

„ 3 „ management.
„ 4 „ winding up.
„ 5 „ the registration office.
„ 6 „ companies registered under Act.
„ 7 „ companies authorized to register.
„ 8 „ unregistered companies.
„ 9 „ repeal of Acts, etc.

1867 ACT.

6. Liability of directors of a limited company may be made unlimited.

Companies may reduce capital, etc.

1879 ACT.

7. Relates to banks.

1886 ACT.

8. (1.) Winding-up order equivalent to arrestment in execution and decree of furthcoming and completed poinding.

(*a*) No arrestment or poinding, on or after sixty days before order, effectual.

(2.) Winding-up order equivalent to decree of adjudication.

(*a*) No poinding of ground on or after sixty days before order available except for current half-year's interest and one year's arrears.

9. Winding up of company.

(1.) *By the Court.*

(*a*) When special resolution to wind up passed.
(*b*) When company does not begin business for one year, or suspends business for a year.
(*c*) When members less than seven.
(*d*) When company unable to pay its debts.
(*e*) When Court of opinion company should be wound up.

(2.) *Voluntarily.*

(*a*) When period fixed for company's duration expires.
(*b*) When special resolution to wind up passed.
(*c*) When resolution passed that company cannot, by reason of its liabilities, continue its business.

The Acts, generally, are too long to abstract, and the student should read them. They are found collected in the Parliament House Book.

MARITIME LAW.

Affreightment—General and Special Average—Salvage—Repairs and Furnishings to Ships—Bonds of Bottomry and Respondentia.

I. AFFREIGHTMENT.

1. A contract for hiring ship or part for carriage of goods or persons.
2. Consensual contract.
3. No particular form of words required.
4. Must be written, as a sixpenny stamp required.
5. May be for time or voyage.
6. Contract is expresssed in a *charter party.*

II. CHARTER PARTY.

Definition of.	Obligations on Owners.	Obligations on Freighter.
Contract of affreightment specifies— 1. Ship or part. 2. Time of hire. 3. Amount of hire. 4. Time for loading and unloading. 5. Charge for demurrage. 6. Tonnage of ship. 7. Must be written on 6d. stamp. 8. Executed by owner, or agent, or master, if abroad.	1. Seaworthy ship. 2. Proper master and crew. 3. Proper ship's papers. 4. To sail at appointed time. 5. Ship ready for cargo. 6. No deviations from voyage. 7. Safe delivery of goods. *Exceptions*— Perils of sea, hostile force, inevitable accident.	1. To furnish cargo. 2. Have it ready for shipping at time fixed. 3. Pay freight. 4. Take due delivery.

III. BILL OF LADING.

1. A document signed by master of ship, fixing—(*a*) Condition of goods; (*b*) Giving title to party to demand delivery; (*c*) Acknowledgment of goods; (*d*) Obligation to deliver.
2. Negotiable instrument in sets of three,—one for master, one with goods, and one to consignee. When one used, others void.

IV. FREIGHT.

1. Payment of freight is condition of delivery.
2. Lien over cargo for same.
3. Damaged goods. Freight due if delivery taken.
4. Due *pro rata itineris*, if ship stopped by peril of sea or enemies.
5. If voyage divisible into parts, freight due for each.
6. If part of cargo lost, freight lost in proportion.
7. Dead freight, where party fails to fill up full cargo.

V. AVERAGE.

Particular Average is partial loss or damage occasioned by shipwreck, accident, etc.

Loss falls where it lights.

General Average is where cargo is sacrificed for common benefit and safety, and loss is borne rateably.

What is necessary for it.	Subjects of contribution.	Who are liable.
1. That sacrifice purposely made by hand of man. 2. Of cargo, ship, or rigging. 3. That rest of property be saved. 4. That goods must have been cargo (not deck load). 5. They must have bill of lading.	1. Cargo, including goods thrown over, on deck, luggage in boxes. Not persons or apparel. 2. Ship, deducting stores. 3. Freight, deducting wages.	1. Every owner of goods or consignee, except owner of goods lost. 2. Goods are taken at value at port of arrival, or at port where stopped. 3. If damaged, the deteriorated value taken. 4. Lenders in bonds of bottomry and *respondentia*.

VI. SALVAGE.

Who are entitled to it.	When due.	Amount.
1. One who interferes for safety of ship and cargo, not being bound to do so. 2. Master and crew, after capture, or termination of service. 3. Passengers after they might have left ship. 4. Pilot in extraordinary cases. 5. King's ship, if in sight at recapture. 6. Any ship recapturing.	1. Shipwreck. 2. Recapture. 3. Derelict.	1. In shipwreck and derelict, left to judicial determination, unless fixed by agreement. 2. In recapture, rate is regulated by statute $\frac{1}{8}$ for navy and king's ships: $\frac{1}{6}$ for private ships.

VII. REPAIRS AND FURNISHINGS.

When made by Owners—

1. Owners liable *pro rata.*
2. Actual owners at time of order and by whom given.
3. Lien or retention for home repairs, when ship in custody of carpenters.

When made by Master or Ship's-Husband—

1. Owners liable *singuli in solidum.*
2. Those whose names on register liable.
3. Hypothec for foreign repairs.

VIII. SHIP'S-HUSBAND.

1. Is agent of owners.
2. Arranges outfit, repairs, stores, etc., of ship.
3. Makes contracts for affreightment.
4. Grants bills for furnishings.
5. Receives freight.
6. Cannot delegate.

IX. MASTER.

1. Has sole charge of ship, and course of voyage.
2. Power to freight abroad.
3. To receive goods in general affreightment.
4. Abroad. Power to fit out, repair, etc., to borrow money, and hypothecate ship.

X. BONDS OF BOTTOMRY AND *RESPONDENTIA*.

1. For money lent to owners at home; or master abroad in case of necessity.
2. Bottomry for benefit of ship. *Respondentia* for benefit of cargo.
3. Money is lost, if ship lost.
4. Borrower is bound,—ship and freight in bottomry,—cargo in *respondentia*.
5. Risk of voyage must have commenced.
6. Interest is large, being of nature of insurance.
7. Preference over personal creditors, and is with last bottomry creditor in bonds granted abroad.
8. Owner of cargo has relief against shipowner in bonds of *respondentia*.

INSURANCE.

1. Insurance is an indemnity against possible loss.
2. There must be (1) a subject, (2) premium paid, (3) risk run.
3. Subject insured must be a risk, or believed to be so. If no risk run, premium is returned.
4. Subject must belong to insurer, or exist *in spe*, or he must have an insurable interest in it.
5. Must be lawful.

Must contain.	Risks insured against.	Obligations on, and implied warranties by, insured.	When insurance due.
1. Writing and stamp. 2. Signed by insurer or agent. 3. The particular risk. 4. Name of insurer, and sum. 5. Name of insured and ship. 6. Specification of subject insured. 7. Commencement and termination of risk ("at and from" and "from"). 8. Any express warranties.	1. Perils of sea, by wind, waves, lightning, rocks, sands, collision, etc. 2. Fire. 3. Enemies, by capture in war. 4. Detention of princes, kings, etc. 5. Piracy. 6. Jettison. 7. Barratry. 8. Other perils generally. Running down clause excepts damages paid to other ship. *Exceptions by Memorandum.* Memorandum excepts partial losses, unless general average on corn, fish, salt, fruit, flour, seed, except by jettison or stranding; and from partial loss, under a certain rate, on sugar, tobacco, hemp, flax, hides, skins, unless by general average or stranding. Total loss of some goods not reckoned partial loss on whole.	1. Material statements must be true. 2. No concealment or misrepresentation. 3. Fraud of agent binds insured. 4. Warranty that circumstances are true. *Implied Warranties.* 5. Seaworthiness. 6. Non-deviation, unless justifiable or absolutely necessary.	1. Barratry by master or crew. 2. Total loss, or constructive total loss, when ship cannot be repaired at reasonable expense; or loss of goods, where object of voyage defeated. (*a*) Implies abandonment. (*b*) Total loss is valued or not valued. If not valued, proof of amount necessary. 3. Abandonment may take place in case of constructive total loss, when great probability of total loss, where voyage lost, or thing of little value to owner. (*a*) Notice of abandonment becomes a contract when accepted, but before acceptance loss may become partial. (*b*) Master liable as agent for underwriters on abandonment. 4. Partial or average loss. By stranding, striking rock, loss of boats, masts, yards, etc. (*a*) Part of insurance due.

Adjustment of Loss.

1. Valued policy.
   Sums named in policy.
2. Open policy.
   (1.) Total loss. Value of ship as at commencing port, stores, wages, premium of insurance, and freight. Cargo by invoice price, with charges, etc.
   (2.) Partial loss. Value of ship, deducting one-third from new materials and labour.

IMPLIED OBLIGATIONS.

Restitution—Repetition—Recompense—Negotiorum Gestio.

I. RESTITUTION.

Is due—

1. When one is in possession of another's goods, without consent.
2. When one has received payment of money not due.
3. Of stolen goods.
   (1.) One who has bought in open market, and has sold, only liable for difference between prices.
   Exceptions.—Bills, money, and bank notes. Holder of bill must prove value given.
4. When articles received in mistake.
5. When obligation undertaken and fulfilled on a condition which has failed.
   RULE—*Causa data non secuta.*
6. When thing given on a certain condition, which fails.

II. REPETITION.

Is due—

1. When delivery, or payment, made on an erroneous idea. Action is called *Condictio indebiti.*

Exceptions—

1. If natural obligation to pay.
2. If payment is a donation.
3. If payment made in knowledge that there is no obligation to make it.
4. If payment made under error in law only.
5. If payment made in a transaction or compromise.

III. RECOMPENSE.

Is due—

1. When one has gained by act of another without intention of donating.
2. Under *lex rhodia de jactu.* General average.
3. When one has worked on a common subject.

Exceptions—

1. When work only for worker's convenience, except when his right to subject prematurely terminated.
2. Partner employed at extraordinary work for company.

IV. *NEGOTIORUM GESTIO.*

Negotiorum gestor is one who takes charge of another's affairs, in his absence, without his knowledge.

He is bound to—

1. Complete performance.
2. Account for intromissions.
3. Restore all he has received.
4. Use due diligence.
   (1.) *Culpa levissima,* if interference officious.
   (2.) *Culpa lata,* if interference fair.
   (3.) *Culpa levis,* if interference necessary.

He is entitled to—

1. Indemnification for expenditure.
2. Relief from all engagements.

PLEDGE.

Nature and Effect—

1. Is constituted by delivery.
2. Creditor's right is continued by possession.
3. Creditor is bound to keep subject carefully, and restore on payment of debt.
4. Right of property and risk remain with owner, and creditor has no right of use.
5. Creditor has power to sell only by judicial authority.
6. Creditor can retain till whole of debt paid.
7. Creditor's right may be extended to cover subsequent debts.

Subjects of Pledge—

1. Anything capable of delivery, as corporeal moveables.
2. Debts, when identified with the document of debt, as bills.
3. Title deeds, but not as giving right to lands.

HYPOTHEC.

Conventional Hypothecs—

1. Bottomry.
2. Respondentia.

Tacit Hypothecs—

1. Law agent's right to take decree for expenses in his own name, or to stop payment of same to client.
   (1.) Compensation cannot be pled against agent.
   (2.) Client cannot defeat hypothec by settling case, when decree of expenses must follow or exists.

Special Hypothecs—

1. On ships (1) for repairs abroad, (2) by freighter, (3) for seamen's wages, (4) for average loss.

2. For medical attendance on deathbed, expense of burial, mournings, etc.
3. For servants' wages.
4. Year's rent of house.
5. Ministers' Widows' Fund.
6. Friendly society, on funds of its office-bearers.
7. Exchequer bills.
8. Taxes.

RETENTION OR LIEN.

Nature and Effect—

1. Only arises from mutual contract or recognised usage.
2. Results from actual and lawful possession, and is security for performance.
3. Applies to corporeal moveables and debts.
4. Confers only power to retain, and no active right of possession.
5. Expires with loss of possession, unless loss effected by undue means or error.
6. Right does not revive on recovery of possession, if effectually lost.
7. Right deprives owner of use and benefit of subject till his part of contract performed, or debt paid.

Special Retention—

Arises out of particular contract, and is security for its fulfilment.

Cases—

1. Of ship for repairs, at home or abroad.
   (1.) Excluded by implied contract, unless debtor *vergens ad inopiam.*
2. Of goods, for carriage by land or sea.
3. Of goods, for (1) average loss, (2) salvage, (3) debts by travellers to innkeepers and stablers, (4) cattle for grass rent, (5) goods in workmen's hands, for price of labour.

General Retention—

Operates as security for general balance of account between parties.

Cases—

1. Law agents holding title deeds for business account.
   (1.) Does not cover cash account, loans, or salary.
   (2.) Does not extend to deeds lodged for a specific purpose.
   (3.) Effectual against personal creditors in bankruptcy, singular successors, and heritable creditors.
   (4.) Client cannot demand inspection, but third party with adverse right can do so.
2. Factors, over all principal's goods in their hands.
3. Bankers, over all unappropriated paper belonging to client.
4. Policy brokers, over policy and sums under it.
5. Trustees, over trust estate for advances.
6. Cautioners, over principal's goods or money.

Discharge—

1. By agreement, before possession begins.
2. By agreement, implied by custom of trade.
3. By contract, after possession begins.
4. By restriction of claim to personal credit.
5. If terms of contract inconsistent with retention.

PAUPER'S SETTLEMENT.

1. **Birth or Original Settlement.**
   Never lost, but may be superseded.
2. **Residential Settlement.**
   (1.) By five years' continuous residence, without receiving parochial relief or begging.
   (2.) Occasional absences do not break it, unless intention is to leave parish.
   (3.) Is lost, if during any subsequent period of five years there is not one year's continuous residence.

3. Derivative Settlement of pauper's wife and children.
   (1.) Woman, by marriage, acquires settlement of husband.
   (2.) Legitimate children take father's settlement.
   (3.) Illegitimate children take mother's settlement.
   (4.) On father's death, and failure of settlement derived from father, pupil children take settlement from mother.
   (5.) Children, when married, or forisfamiliated, can acquire a settlement of their own by residence.

MERCANTILE LAW AMENDMENT ACT, 1856,

19 & 20 Vict. c. 60.

The principal changes made on the existing law were—

1. Goods sold, but not delivered, not to be attachable by creditors of seller, § 1.
2. Seller not entitled to retain against second purchaser, on payment of price, § 2.
3. Seller can arrest or poind before second sale, § 3.
4. Hypothec not affected by Act, § 4.
5. Seller does not warrant, unless express warranty given, § 5.
6. Guarantees, etc., must be written, § 6.
7. Change of firm annuls guarantee, unless continuance implied, § 7.
8. Discussion of cautioners abolished, § 8.
9. Discharge of one cautioner discharges all, § 9.
10. Carriers liable for losses by fire, § 17.
11. All ports in United Kingdom home ports, § 18.

BILLS OF EXCHANGE.

The law as to bills of exchange is now codified in the Bills of Exchange Act, 1882, 45 & 46 Vict. c. 61. A short summary of it is given here.

I. Definition.

A bill is an unconditional order in writing, signed by person giving it, ~~on another person~~, to pay a certain sum of money, on demand, or at a fixed date, to a ~~third~~ person, or to bearer.

II. Requisites.

1. Date; not invalid without. May be ante or post dated.
2. Fixed time of payment, or at demand, or sight; three days' grace given.
3. Drawee's name and address.
4. Payee's name, if not to bearer.
5. Sum payable.

III. Acceptance.

1. Must be written on bill, and signed.
2. Must be none other than payment of money.
3. Can be done when bill incomplete, or overdue, or dishonoured.
4. Can be qualified.

IV. Negotiation.

1. Negotiated when transferred by indorsement or delivery.
2. Indorsement must be written and signed on bill, and for whole sum.
3. May be ~~prohibited~~, restricted, blank, or special.
4. When negotiated overdue, it is subject to any defect of title at maturity, and no better title can be afterwards acquired.
5. When endorsed to party already liable, he may reissue; but has no recourse against intervening persons.

V. Presentment for Acceptance.

Must take place—

1. When bill payable at sight.
2. When stipulated for, or when payable elsewhere than drawee's house or place of business.
3. Within reasonable time, unless no time before date of payment.

If not accepted, bill is dishonoured, and holder has recourse against drawer and indorsers.

VI. Presentment for Payment.

Must be made (three days' grace allowed).

1. If bill not on demand, first day it falls due, and within a reasonable time.
2. To payee (or all, if not partners) at reasonable time and place.
3. At place named in bill, if any.
4. Not necessary when—(1) Payee cannot be found; (2) Or is fictitious; (3) When waived; (4) ~~When reason to believe bill will not be paid.~~

If not paid, bill dishonoured, and holder has recourse against drawer and indorsers.

VII. Acceptance for Honour.

1. Bill may be accepted, or paid, for honour, by any party, for any one liable for bill, and he has recourse against such party and those liable to him.
2. If paid for honour *supra protest*, it must be notarially attested.

VIII. Notice of Dishonour.

1. Notice must be given to drawer and each prior indorser.
2. Must be in writing, and within reasonable time. (Time, in same town, to be reckoned the day after; in other town, to be posted day after.)
3. May be dispensed with—(1) When it cannot be given; (2) When waived; (3) When drawee is drawer, or fictitious; (4) Where drawer liable to pay.
4. Where notice of non-acceptance not given, rights of holder in due course not affected.
5. Where not accepted and notice given, no further notice required, unless bill accepted.

IX. Noting Bill.

1. Dishonoured bill may be noted to preserve recourse.
2. On day of dishonour.
3. At place of dishonour, unless returned dishonoured by post.
4. May be dispensed with (as in notice of dishonour), or excused, if beyond control of holder.
5. A protest can be transferred by assignation.

X. Alterations or Vitiations.

If in (1) date, (2) sum, (3) time of payment, (4) place of payment where generally accepted, and without acceptor's consent, it relieves all, except party making alteration and subsequent indorsers.

XI. Payment.

Sum in formal bill can be recovered from debtor by summary diligence; but if debtor dead, or bill informal or prescribed, by ordinary action.

XII. General Rules.

1. The Act gives rules as to—(1) Conflict of laws on bills; (2) Cheques and crossed cheques; (3) Promissory notes; (4) Protest, where notary cannot be got.
2. Form of protest appended, Schedule I.
3. Repeals former Acts as to bills in Schedule II.

DILIGENCE AGAINST MOVEABLES.

The Personal Diligence Act (1838) introduced forms, but older forms are still competent, though never used.

The Forms of Diligence are—

1. Arrestment, followed by furthcoming.
2. Poinding.
3. Writ of extent.
4. Confirmation of executor creditor.

A Warrant on which Diligence proceeds is contained in all—

1. Decrees of a Court.
2. Writs or deeds, with a clause of execution, and registered in books of any Court.

I. ARRESTMENT.

1. Competent to creditors in—(1) A liquid debt; (2) A future or contingent debt; (3) An illiquid debt.
   (1.) In security—
   Proceeds on summons, containing warrant to arrest, or letters of arrestment.

(2.) In execution—
On a decree or registered deed, or letters of arrestment on liquid debt.

(3.) In future debt—
On letters of arrestment.
Allowed only when debtor *vergens ad inopiam*.

(4.) To found jurisdiction—
On letters of arrestment. This is not properly a diligence, and arrestment of new must be made on the summons.

2. The copy of arrestment is served on party who holds funds or property of debtor. If served edictally, arrestee must be informed.
3. Arrestment confers a preference, and arrestee is liable if he part with fund arrested.
4. Arrestments subsist for three years.
5. In arrestments for security, citation in summons must be executed within twenty days, and summons called within twenty days from date of compearance, or arrestment falls.
6. If within sixty days of sequestration, are not effectual.

Subjects Arrestable—

Generally all moveable property held for, or monies due to, debtor.

Exceptions—

1. Bills of exchange.
2. Sums previously appropriated for particular purposes.
3. Alimentary funds.
4. Salaries of Court of Session judges.
5. Servants' wages, unless in excess of what is required for maintenance.
6. Future debts.
7. Funds heritably secured.

Recall and Loosing of Arrestments.

1. Where oppressively used, judge may recall.
2. May be loosed on caution being found.
3. May be recalled by arrester.
4. Loosed by payment of debt.

II. FURTHCOMING.

1. Arrester is pursuer.
2. Arrestee and debtor are defenders.
3. The action ascertains—
   (1.) Subjects.
   (2.) Whether arrested properly.
   (3.) How much arrested.
   And adjudges debt, or sufficient thereof, to pay arrester.
4. Crown debts do not require furthcoming.

III. POINDING.

Is the adjudication and judicial sale of moveables for payment of debt, and is real or personal.

1. **Real Poinding, or Poinding of the Ground.**
   Properly a heritable diligence.
   Competent to—
   (1.) Superior.
   (2.) One holding a real burden; or
   (3.) One holding a completed right *debitum fundi*.
   Against—
   Vassals, or tenants, or possessors of ground.
   Object is—
   To arrest all moveables on the lands.
   If tenants' moveables, only to extent of their rent.
2. **Personal Poinding.**
   Competent to one holding extract decree against debtor.
   Charge must have expired.
   Poinding regulated by Personal Diligence Act (§ 23 to 32).
   (1.) Messenger values and inventories goods.
   (2.) Debtor is served with a list, and retains goods.
   Any person carrying off poinded goods is liable in double value.
   (3.) Report of poinding made to Sheriff within eight days.
   (4.) Sheriff orders sale ~~within~~ twenty days.
   (5.) Sale reported, note thereof lodged with sheriff-clerk within eight days, and debt, etc., paid to creditor.

Subjects Poindable.

All moveable goods generally.

Exceptions—

1. Subjects not marketable.
2. Young wheat and grass.
3. Implements of husbandry, horses, etc., during the ploughing season, if there are other goods.
4. Goods in which debtor has a qualified interest.
5. Debts.

IV. WRIT OF EXTENT.

Was used to attach for Crown debts, and now abolished. The forms in use are much the same as for other debts, but Crown has preference over all creditors.

V. CONFIRMATION OF EXECUTOR CREDITOR.

1. Creditors cannot arrest in executor's hands before confirmation.
2. Creditor may apply for confirmation to extent of his debt, after constituting it.
3. Procedure same as in ordinary case of executor dative.
4. Executor dative can exclude by confirming.
5. Other creditors can be conjoined.
6. Preference equal to all creditors confirming within six months.

VI. DILIGENCE AGAINST THE PERSON.

1. Imprisonment for debt only competent for — (1) Taxes, fines, or penalties due to Crown; (2) Rates and assessments; (3) Aliment, if failure to pay wilful (limited).
2. Arrest and imprisonment on *meditatione fugæ* warrant.
3. Imprisonment in action of lawburrows.

INHIBITION.

A diligence under Signet, prohibiting debtor from alienating or burdening his lands to prejudice of inhibitor.

1. **Competent on**—
   (1.) Debts already due.
   (2.) Future debts, where creditor *vergens ad inopiam*.
2. **Proceeds on**—
   (1.) Decree.
   (2.) Liquid document of debt.
   (3.) Summons or depending process in Court of Session or Sheriff Court.
3. **Warrant in**—
   (1.) Letters of inhibition, proceeding on bill; or
   (2.) Summons (after 1868).
4. **Completed by**—

Before 1868.	*After* 1868.
(1.) Execution against debtor.	(1.) Execution against debtor.
(2.) Publication at county town.	(2.) Registration in General Register of Inhibitions, or notice registered and inhibition registered within twenty-one days.
(3.) Registration in Particular Register of Inhibitions within forty days.	
Affected *acquirenda*.	Does not affect *acquirenda* unless used against heir of entail, or other indefeasible title.
Subsisted for forty years.	*After* 1874.—Subsists for five years, and must be renewed by recording memorandum.

5. **Discharge and Recall.**
   (1.) Voluntary discharge by creditor } Registered in
   (2.) Recall by Court } Inhibition Register
   On petition for recall, where nimious and oppressive, and the debt is future, contingent, or unconstituted.
   (3.) Prescription.

ADJUDICATION IN IMPLEMENT.

I. AGAINST DEBTOR.

1. Action of adjudication.
2. Abbreviate recorded in sixty days.

II. AGAINST HEIR.

BEFORE 1847.	AFTER 1847.	AFTER 1858.
One year after succession opened. 1. Letters of general charge. 2. Action of constitution. 3. Letters of special, or general special charge. 4. Action of adjudication. 5. Abbreviate recorded in sixty days.	Nos. (1) and (3) dispensed with. Nos. (2) and (4) necessary, or both combined, when heir renounced.	*Six months after succession opened.* Nos. (2) and (4) combined.

III. COMPLETION OF ADJUDGER'S TITLE.

	Debtor infeft.	Debtor uninfeft.
BEFORE 1847.	1. Charter of adjudication, or adjudication and confirmation, and sasine.	1. Resignation or confirmation on unexecuted procuratory, and sasine.
AFTER 1847.	1. As above ; or 2. ~~Instrument of~~ sasine on decree ~~gave *de me* holding~~, and with confirmation an *a me* holding ; or 3. Resignation, and sasine.	1. As above ; or 2. Notarial instrument on decree, and confirmation, and sasine.
AFTER 1858.	1. As above. 2. Registration of decree, ~~or notarial instrument on decree, and~~ confirmation, ~~and sasine~~.	
AFTER 1874.	1. Registration of decree, or notarial instrument on decree. Charters by progress abolished, and entry implied by registration.	

ADJUDICATION FOR DEBT.

1. Introduced in 1672 in place of apprisings, and were special, where debtor consented to part of lands being adjudged, or general, of whole lands.
2. Proceedings and completion of title same as in adjudication in implement.
3. Bill for summons required till 1847, and special as well as general adjudication.
4. Debtor has right of redemption for five years in special adjudication, and ten years in general adjudication.
5. Title to heritable securities adjudged after 1845 could be completed by recording abbreviate in Sasine Register.

INTESTATE MOVEABLE SUCCESSION.

The law as to this was greatly changed by—(1) The Intestate Moveable Succession Act, 1855; and (2) The Married Women's Property Act, 1881.

Intestate Moveable Succession Act, principal changes.

1. Introduced representation among next of kin and their descendants, but restricted it to brothers and sisters in collateral line.
2. Heir of predeceasing heir can collate. If he does not, his brothers and sisters take difference between value of heritage and share on collation.
3. Father to take one half estate if no issue, or mother one third if father dead.
4. Failing brothers and sisters consanguinean, brothers and sisters uterine to succeed to one half of estate.
5. Wife's representatives to have no claim to goods in communion.
6. Marriage dissolved within year and a day to have effect of having subsisted longer.

Married Women's Property Act, principal changes.

1. Wife married after Act to have separate estate in moveables.
2. Parties married before Act may come under it by deed.
3. Husband to have similar rights in wife's estate as wife in husband's.
4. Children to have right of legitim in mother's estate.

I. MOVEABLE SUCCESSION.

The moveable estate of a man or woman, where there are no contracts affecting it, may be divided into three parts if there are widow and children, and two parts if widow or children. They can defeat the legal distribution only as to dead's part.

	Legitim.	Jus relictæ.	Dead's part.
To whom due.	1. All surviving children, legitimated or posthumous, unless they have renounced. No representation allowed. 2. Although only one child, it is due. 3. Eldest son has no share, unless he collates.	Widow.	Children or disponees under testamentary deed. Heir excluded. Representation allowed.
Amount.	One third, or if no widow, one half.	One third, or if no children, one half.	One third, or one half, or whole estate if no widow or children.
Defeat of.	Only by irrevocable *inter vivos* deed.	Only by irrevocable *inter vivos* deed.	Can be defeated by any deed of parent.
Exclusion of.	1. Express discharge. 2. Acceptance of provision in lieu thereof. 3. By provision in antenuptial marriage contract in lieu thereof.	1. Express discharge. 2. Acceptance of provision in lieu. 3. Provision in antenuptial marriage contract.	Can be excluded by any deed of parent.
Reduction in amount of.	1. Advances to set up in trade. 2. Advances for settlement in world. 3. Marriage portion. Advances for aliment, education, or apprenticeship, or loans, do not reduce.	Only by irrevocable *inter vivos* deed.	Can be reduced by any deed of parent.

II. TABLE OF INTESTATE MOVEABLE SUCCESSION.

1. **Man leaving Wife and Children.**
   One third to wife, one third to children as legitim, one third to children as next of kin.
2. **Man leaving Wife and Grandchildren.**
   One half to wife, one half to grandchildren.
3. **Man leaving Wife and no Children.**
   One half to wife, one half to husband's next of kin.
   Father one half, brothers and sisters one half.
   If father dead, mother one third, brothers and sisters two thirds.
4. **Man predeceased by Wife leaving Children.**
   Whole to children.
5. **Man leaving neither Wife nor Children, or unmarried Man.**
   Father one half (or mother one third), rest to brothers and sisters.
   If no father or mother, whole to brothers and sisters.
   If no brothers or sisters, whole to father.
   If no brothers, sisters, or father, one third to mother, two thirds to nearest heirs.
6. **Woman's Estate, after 1881.**
   Same as above.

III. GENERAL RULES.

The successors in moveable estate are—

1. Descendants.
2. Collaterals.
3. Ascendants with their collaterals.
   First full blood, second half blood consanguinean, third half blood uterine, to extent of half estate.

Father takes one half or mother one third if no issue.

Representation allowed, but not beyond descendants of brothers or sisters.

CONFIRMATION OF EXECUTORS.

Is a decree of a Commissary, now the Sheriff. Operates as a completed assignation to executor.

1. **Executor Nominate.**
   - (1.) Produces will to Commissary, with inventory.
   - (2.) Testament testamentar issued by Commissary, which vests whole estate.

2. **Executor Dative.**

   Those entitled to be decerned are—(1) General disponee; (2) Nearest of kin; (3) Widow; (4) Creditors; (5) Legatees; (6) Judicial factor.

   - (1.) Petition to Commissary.
   - (2.) Published in court, and edictal citations.
   - (3.) *Inducice* nine days.
   - (4.) Finds caution.
   - (5.) Decree extracted three days after date.
   - (6.) The decree and testamentary deed, if any, are produced to Commissary, with inventory of estate.
   - (7.) Testament dative issued by Commissary, which vests whole estate.

English and Irish estates are included in inventory, and it may be produced and recorded in English and Irish Courts.

Executor can sue before confirmation, but cannot extract decree.

3. **Small Estates.**

   By 38 & 39 Vict. c. 41, when widow or children succeed to less than £150, Commissary-clerk carries through confirmation.

   By 39 & 40 Vict. c. 24, when estate is under £150, Commissary-clerk carries through confirmation.

INTESTATE HERITABLE SUCCESSION.

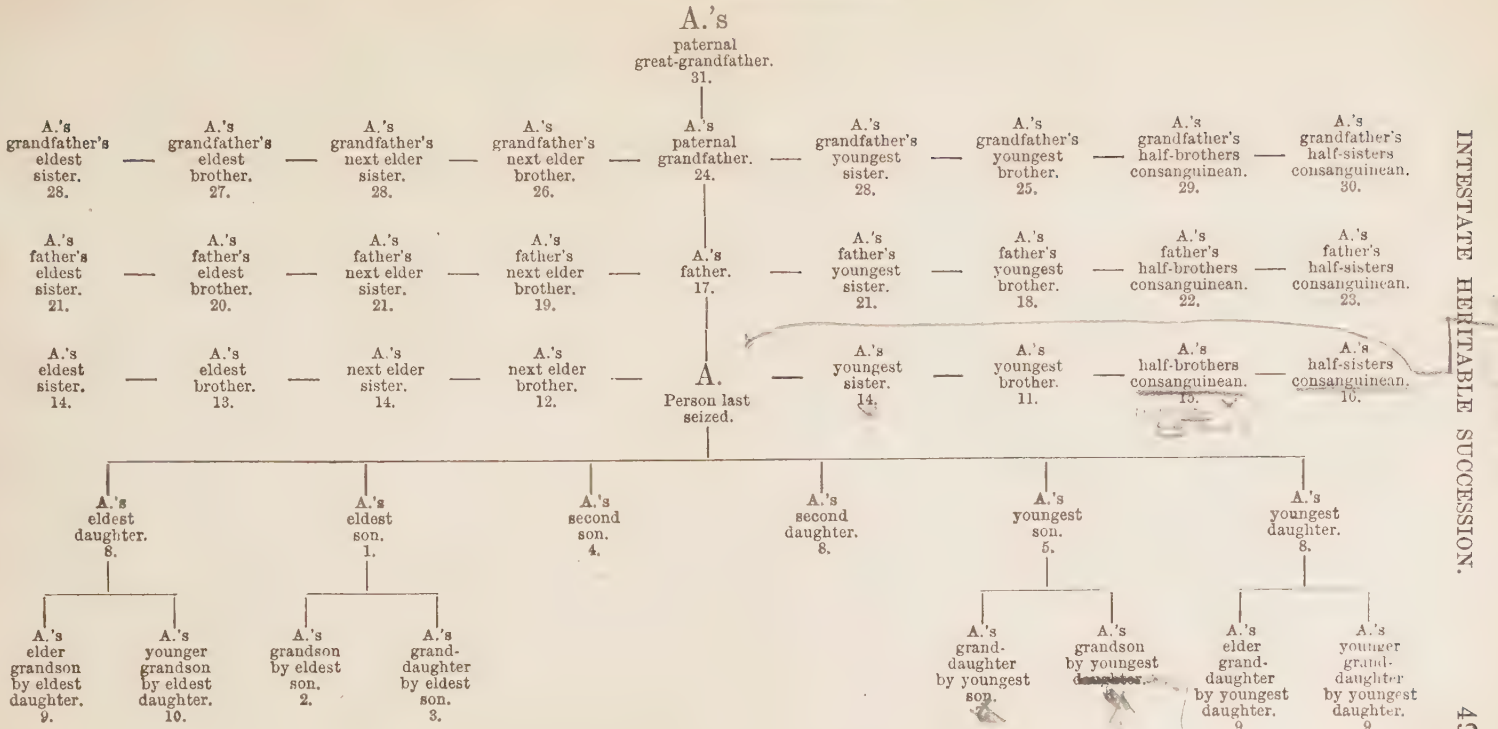
Heritage (1) descends, (2) goes to collaterals, (3) ascends. Conquest ascends (abolished by 1874 Act). Widow takes liferent of one third of heritage, in which husband infeft, as terce.

1. **Terce is not due from** (1) personal rights, (2) burdens by reservation, (3) superiorities and feu-duties, (4) reversions, (5) minerals, (6) leases, (7) burgage subjects unless held feu.
2. **Terce may be excluded by** (1) renunciation in ante-nuptial marriage contracts or acceptance of provisions, (2) by clause in deed of entail.
3. **Terce is made effectual by** service and kenning.
   Husband, if father of heir, takes liferent of lands wife infeft in, as courtesy.

RULES.

1. **Lineal Descent.**
   (1.) Descends to males and their issue in order.
   (2.) Sisters as heirs-portioners.
2. **Collateral Line.**
   (1.) Brothers and their issue, from younger to elder.
   (2.) Sisters as heirs-portioners.
      (1) Full blood, (2) half blood consanguinean—the half blood uterine excluded.
3. **Ascending Line.**
   (1.) Father and his relations, from younger to elder.
   (2.) Mother's relations excluded.
4. **Crown as Ultimus Hæres.**
   (1.) Failing all heirs, Crown takes succession.

TABLE OF INTESTATE HERITABLE SUCCESSION.


A.'s
paternal
great-grandfather.
31.
A.'s grandfather's eldest sister. 28.
A.'s grandfather's eldest brother. 27.
A.'s grandfather's next elder sister. 28.
A.'s grandfather's next elder brother. 26.
A.'s paternal grandfather. 24.
A.'s grandfather's youngest sister. 28.
A.'s grandfather's youngest brother. 25.
A.'s grandfather's half-brothers consanguinean. 29.
A.'s grandfather's half-sisters consanguinean. 30.
A.'s father's eldest sister. 21.
A.'s father's eldest brother. 20.
A.'s father's next elder sister. 21.
A.'s father's next elder brother. 19.
A.'s father. 17.
A.'s father's youngest sister. 21.
A.'s father's youngest brother. 18.
A.'s father's half-brothers consanguinean. 22.
A.'s father's half-sisters consanguinean. 23.
A.'s eldest sister. 14.
A.'s eldest brother. 13.
A.'s next elder sister. 14.
A.'s next elder brother. 12.
A. Person last seized.
A.'s youngest sister. 14.
A.'s youngest brother. 11.
A.'s half-brothers consanguinean. 15.
A.'s half-sisters consanguinean. 16.
A.'s eldest daughter. 8.
A.'s eldest son. 1.
A.'s second son. 4.
A.'s second daughter. 8.
A.'s youngest son. 5.
A.'s youngest daughter. 8.
A.'s elder grandson by eldest daughter. 9.
A.'s younger grandson by eldest daughter. 10.
A.'s grandson by eldest son. 2.
A.'s grand-daughter by eldest son. 3.
A.'s grand-daughter by youngest son.
A.'s grandson by youngest daughter.
A.'s elder grand-daughter by youngest daughter. 9.
A.'s younger grand-daughter by youngest daughter. 9.

NOTE.—The figures give the order in which the parties will succeed.

PASSIVE REPRESENTATION IN HERITAGE.

1. **Is constituted by—**
   - (1.) Heir intromitting with ancestor's effects without entering.
   - (2.) Heir behaving as none but heir has right to do, which is *gestio pro hærede.*
     - (*a*) Intromission with rents, (*b*) by conveying to third party or consenting to same, (*c*) discharging rents, etc.
   - (3.) Heir accepting from ancestor a gratuitous right of what he would have succeeded to as heir.
   - (4.) Heir defending against action for ancestor's debt.
   - (5.) Heir not renouncing upon a charge to enter.
     Nos. 4 and 5 limited to the debt.
   - (6.) Heir passing over ancestor who had held estate for three years, and serving to a remote ancestor.
2. **Exceptions.**
   - (1.) If heir intromits by order of law, or under title not as heir.
   - (2.) Where intromissions small, and no intention to defraud creditors.
   - (3.) If heir only pays ancestor's debts.
   - (4.) If heir takes proceedings to serve which are not completed, assumes title of honour, or takes up honorary office (but not a paid office).

PASSIVE REPRESENTATION IN MOVEABLES.

Vitious intromission, which renders intromitters liable to creditors but not to legatees.

1. **Is incurred by—**
   - (1.) Intermeddling with personal estate without order of law.
   - (2.) By not sealing up repositories.
     Wife and children excepted.

2. **Exceptions.**
   (1.) Where goods had ceased to belong to deceased.
   (2.) Where intromitter had a probable title.
   (3.) Purged by confirmation.

BANKRUPTCY.

I. **The Acts relating to Bankruptcy are—**

19 & 20 Vict. c. 79, 1856.	43 & 44 Vict. c. 34, 1880.
20 & 21 Vict. c. 19, 1857.	44 & 45 Vict. c. 22, 1881.
23 & 24 Vict. c. 33, 1860.	45 & 46 Vict. c. 42, 1882.

II. **Notour Bankruptcy is constituted by—**

1. Sequestration; or adjudication of bankruptcy, in England or Ireland.
2. Insolvency, with
   (1.) Executed charge, followed by imprisonment, or flight, or defence of person, or retiring to sanctuary.

   Where imprisonment incompetent—
   (2.) Sale of effects, or applying for cessio.
   (3.) Executed charge, with execution of arrestment unloosed in fifteen days, or poinding, or decree of adjudication.

   By 1880 Act—
   (4.) Executed charge, which has expired without payment, or where charge unnecessary, by expiry of days prior to execution of decree.

III. **Application for Sequestration must be—**

1. By debtor, with concurrence of creditors, as under.
2. By a creditor or creditors, if debtor notour bankrupt.
   - One creditor, if debt £50 or over.
   - Two creditors, if debts £70 or over.
   - Three or more creditors, if debts £100 or over.
3. In case of deceased debtor.
   (1.) By his mandatory.
   (2.) By a creditor or creditors qualified as above.

IV. Table of Steps in Sequestration, with legal dates therefor.

A petition is presented to Sheriff, or Lord Ordinary on Bills, and warrant to cite granted (induciæ, six to fourteen days; and if edictal, twenty-one days).

1888.

Nov. 1. Sequestration awarded.

Certified copy petition and deliverance and productions transmitted to Sheriff-Clerk (if sequestration awarded in Court of Session).

Certified copy deliverance transmitted to Accountant by clerk.

Sequestration entered in register by Accountant.

„ 3. Abbreviate of sequestration registered in inhibitions (within two days).

„ 5. Sequestration advertised in *Edinburgh Gazette* (in four days).

„ 7. Sequestration advertised in *London Gazette* (in six days).

„ 12. Meeting for election of trustee and commissioners (six to twelve days after sequestration).

[Nov. 12. Estate may be wound up under deed of arrangement, if majority in number and four-fifths in value of creditors agree. Not then necessary to elect a trustee.

„ 15. Sist of sequestration may be granted for two months.

Deed of arrangement to be produced to Court, and estate wound up under it.]

[Nov. 12. Offer of composition made. Nine-tenths can entertain.

„ 13. Advertised in *Gazette*.

Circular to creditors.

Dec. 10. Meeting of creditors. Nine-tenths can accept.

„ 11. Bond of caution lodged with trustee.

„ 12. Sheriff's approval got.

„ 13. Declaration by bankrupt before Sheriff, and discharge granted.]

State of affairs delivered to clerk of meeting.

Report by preses to Sheriff, and deliverance declaring election.

1888.

Nov. 12. Bond of caution for trustee lodged, election confirmed, and act and warrant issued.

Copy act and warrant sent to Accountant.

„ 13. Abbreviate of trustee's confirmation registered in adjudications (in twenty-one days), and possession of estate taken by trustee.

Application (within eight days from act and warrant) to fix examination, diet fixed (from seven to fourteen days after), and warrant for attendance of bankrupt granted.

„ 16. Advertisement of election of trustee and commissioners, examination, and second meeting, in *Edinburgh Gazette*.

Circular by trustee to creditors.

„ 20. Inventory and valuation made by trustee, and copy sent to Accountant.

„ 27. Examination before Sheriff, and oath taken.

Report prepared by trustee for creditors.

Dec. 10. Second meeting.

[Dec. 10. Offer of composition made and entertained.

„ 11. Advertisement in *Gazette* of meeting to

1889. decide, and notices sent to creditors.

Jan. 5. Meeting held. Composition accepted.

„ 7. Bond of caution lodged with trustee.

Meeting of commissioners to audit trustee's accounts, and fix remuneration.

„ 7. Deliverance approving composition.

„ 8. Declaration by bankrupt before Sheriff, and deliverance discharging him, and reinvesting him in estate.]

If no offer of composition.

1889.

Mar. 2. Last day for claims for dividends. (Two months before payment of dividends.)

Trustee's accounts made up. (Four months after sequestration.)

„ 6. Meeting of commissioners to audit trustee's accounts. (Within fourteen days after four months from sequestration.)

1889.

Mar. 14. Trustee adjudicates on claims. (Within fourteen days after four months from sequestration.)

„ 16. Letter to creditors announcing dividends. (Within eight days thereafter.)

„ 19. Advertisement of dividend in *Edinburgh Gazette*. (In next publication.)

April 3. Appeals against trustee's deliverance must be lodged before fifteen days after *Gazette* notice.

„ 18. Scheme of division made up by trustee. (Before six months from sequestration.)

Circular to creditors.

May 2. Dividend payable. (Six months after sequestration.)

[The first dividend is in this instance supposed to wind up estate.

If second and subsequent dividends are necessary, the procedure is similar to that as to the first dividend.]

„ 14. *Gazette* notice, and circular to creditors of meeting to be held to consider application for trustee's discharge.

June 6. Meeting held. (Twenty-one days after notice.)

„ 7. Petition by trustee for discharge lodged. Sederunt book lodged with Accountant.

Unclaimed dividends lodged in bank and receipt sent to Accountant.

„ 12. Decree of discharge granted.

Abbreviate of discharge recorded in inhibitions.

The accounts are made up, and the dividends payable on the expiry of the following periods:—

Accounts.	*Dividends.*
First, four months after sequestration.	First, six months after sequestration.
Second, eight months after sequestration.	Second, ten months after sequestration.
Third, eleven months after sequestration.	Third, thirteen months after sequestration.
Fourth, fourteen months after sequestration.	Fourth, sixteen months after sequestration.

CESSIO.

I. **The Acts relating to Cessio proceedings are—**

6 & 7 Will. IV. c. 56, 1836. | 43 & 44 Vict. c. 34, 1880.
39 & 40 Vict. c. 70, 1876. | 44 & 45 Vict. c. 22, 1881.
Act of Sederunt, Dec. 22, 1882.

II. **Those who may apply for Cessio are—**

1. Notour bankrupts.
2. Any creditor of a notour bankrupt, on giving from six to fourteen days' notice to debtor.

III. **Table of Steps in Cessio.**

1889.

Jan. 1. Petition presented to Sheriff.
Warrant got for intimation in *Edinburgh Gazette*, and appointing creditors to appear in court not less than thirty days after.

„ 5. Notice sent to creditors. (Within five days.)

„ 25. Debtor lodges state of affairs. (Six days before meeting.) *Gazette* and evidence of notice to creditors lodged.

„ 31. Examination held, decree granted, and trustee appointed.
[Appeal to Sheriff is competent.
Decree operates as disposition *omnium bonorum* in favour of trustee till disposition executed.]
Trustee intimates decree and appointment to Accountant, and finds caution.

Feb. 7. Trustee reports to Sheriff (within seven days) when estate will be realized, and gets decree fixing second meeting.

„ 14. Notice in *Gazette* and circular sent to creditors. (Within seven days.)

„ 19. Claims must be lodged. (Twenty-one days before second meeting.)
[Affidavits and claims are under same rules as those in bankruptcy.]

Mar. 2. Trustee adjudicates on claims, lodges list with Sheriff-Clerk, and gives notice of all rejected claims to creditors. (Ten days before meeting.)
[If no funds, Sheriff dispenses with this.]

1889.

Mar. 9. Notice of any objections to claims, or refusal of them. (Three days before meeting.)

„ 12. Meeting held, accounts adjusted, and Sheriff orders dividend.

[Further dividends, if any, fixed by Sheriff on application of trustee.

First dividend supposed to wind up estate, and if any others, proceedings the same.]

July 1. Debtor can apply for discharge. (Six months after cessio.)

The proceedings are same as in sequestration, but meeting not required, as creditors can give consent in writing.

The debtor is not entitled to discharge unless he pays 5s. in the £, or if less, from innocent causes (1881 Act).

FORM OF DISPOSITION.

Before 1847.	After 1847.	After 1858.	After 1874.
Clauses—	The same clauses, but in shorter form, as given in Act.		
1. Narrative.			
2. Dispositive.			
~~3. Date of entry.~~			
4. Obligation to infeft.		4. Obligation to infeft.	4. ~~Obligation~~ to infeft.
5. Procuratory of resignation.			5. Procuratory of resignation.
6. Precept of sasine.		6. Precept of sasine.	6. ~~Precept~~ of sasine.
7. Assignation to writs.		Unnecessary.	Unnecessary.
~~8. Assignation to rents.~~			
9. Relief from burdens.			
10. Warrandice.			
11. Registration.			
12. Testing.			

ASSIGNATION OF UNRECORDED CONVEYANCES.

Before 1858.

By disposition of lands and assignation to writs, without executive clauses.

After 1858.

By assignation in short form written on disposition, or separate.

FORM OF CHARTER.

Before 1847.

Clauses—

1. Narrative.
2. Dispositive.

   Bounding charter confines disposition to what is within boundaries, and prevents acquisition by possession of lands outside.

3. Reservation clause of any rights to superior.
4. Conditions and qualifications of feu, with irritancies.
5. Tenendas.
6. Term of entry.
7. Reddendo.
8. Warrandice.
9. Assignation to writs and rents.
10. Relief from feu-duties, etc., to over-superior.
11. Registration.
12. Precept of sasine.
13. Testing clause.

Proper Investiture—

By superior himself, in presence of *pares curiæ*, delivering symbols to vassal on the land, and so infefting him.

After 1847.

Clauses in Shorter Form—

1. Narrative.
2. Dispositive.
3. Reservations, etc.
4. Conditions and qualifications.
5. Term of entry.
6. Tenendas.
7. Reddendo.
8. Assignation of writs and rents.
9. Relief from feu-duties to over-superior.
10. Warrandice.
11. Registration.
12. Precept of sasine (till 1858).
13. Testing clause.

Improper Investiture—

By superior executing *breve testatum* (now precept of sasine), and authorizing bailie to grant infeftment for him.

SERVITUDES.

Negative.

Can only be acquired by obligation by the servient proprietor.

Positive.

Can be acquired by—
(1.) Express grant.
(2.) Reservation.
(3.) Prescription.

Natural (imposed by nature, as fall of water, etc.).
Legal (those imposed by statute or public policy),
or
Conventional (those constituted by grant, consent, or prescription).

Predial (or real).

Rural.

1. Foot, horse, or cart roads.
2. Dams.
3. Aqueducts.
4. Watering horses or cattle.
5. Pasturage.
6. Fuel.
7. Feal and divot.
8. Thirlage.
   (1.) Grana crescentia.
   (2.) Grindable corn.
   (3.) Invecta et illata.

Urban.

1. Tigni immittendi.
2. Oneris ferendis.
3. Stillicide.
4. Altius non tollendi.

Personal.

1. Liferent.
2. Terce.
3. Courtesy.

Extinguishment.

By—1. Confusione.
2. Dominant or servient tenement perishing.
3. Non utendo.
4. Consent.

Negative Servitudes can only be lost by (1) consent; (2) prescriptive usage adverse to servitude.

INCUMBRANCES ON LAND TO BE SEARCHED FOR.

SASINES.	In General and Particular Registers till close, and then in Division of General Register of Sasines. For forty years prior to purchase. If burgage property—in Burgh Register.
ADJUDICATIONS.	In Register of Abbreviates, from date of recording title which founds prescription, or earlier, if required, to show a discharge; but not more than forty years, and after 1st January 1874, twenty years.
INHIBITIONS.	*Before* 1874.—For forty years against each proprietor till 1868, after which inhibitions do not affect *acquirenda*. *After* 1879.—For five years against all proprietors for last forty years.

Inhibition and Adjudication Registers are joined after 1868 Act.

Other Incumbrances—

1. Entails.
2. Servitudes.
3. Leases.
4. Teinds—
   - (1.) Whether seller has heritable right (*cum decimis*).
   - (2.) Whether they are valued or not.
   - (3.) If valued, how far teind exhausted.
   - (4.) How much free teind.
   - (5.) Date of last augmentation.
   - (6.) Is decree of valuation *ex facie* unchallengeable ?
5. Succession duty. (By 1853 Act a first charge on lands. Discharge should be exhibited.)
6. Real warrandice.
7. Terce or courtesy.
8. Annuities.
9. Jedge warrants in urban subjects.
10. Litigiosity (since 1868 must be registered in Inhibition Register).

SASINE.

	Precept of Sasine.	Instrument of Sasine.
BEFORE 1845.	Old form. Was originally separate from deed, afterwards incorporated. It was directed to bailie, to proceed to the lands, and to give actual heritable state and sasine by delivery of symbols.	Old form narrating whole ceremony on the lands. Recorded within sixty days.
AFTER 1845.	Modern form. Precept shortened and directed to any notary-public to give sasine, without symbols, or going to lands.	Instrument shortened in form. Narrated precept of sasine, and sasine given in virtue thereof. Could record it during life of party in whose favour expede. (Burgage after 1860.) Had no date but date of recording. No docquet necessary.
AFTER 1858.	Unnecessary.	Unnecessary.
	The deed itself, with or without a clause of direction, or a notarial instrument, could be recorded.	

By 6 and 7 Will. IV. c. 33, no objections can be taken to essential erasures in a sasine unless fraudulent, or not conform to the record.

CHARTERS AND WRITS OF CONFIRMATION AND RESIGNATION.

	Confirmation.		Resignation.		Combined Charter.
BEFORE 1847.	Charter required to confirm all prior unconfirmed titles.		Charter did not operate as confirmation to any extent.		Charter required to confirm all prior unconfirmed titles.
AFTER 1847.	Necessary only to confirm the lands and last sasine. Superior bound to grant same.		No change.		No change.
1858.	No change as regards the charter.	Writs of confirmation introduced, with same privileges as charters.	No charge as regards the charter.	Writs of resignation introduced, with same privileges as charters of confirmation and resignation.[1]	Superseded by writs of resignation with which the disposition had also to be recorded.
1860.	No change.		Operate as charters of confirmation.	No change.	Superseded.
1868.	No change.		No change.		Superseded.
1874.	Abolished.		Abolished.		Abolished.

[1] 1858 Act, § 8, made an error as to word "not." 1860 Act, § 33, corrected it.

SERVICE.

	Special.	General.
BEFORE 1847.	Used only where ancestor infeft, as a step to obtaining a Crown precept or precept of *clare constat.* Fell by death. Representation unlimited, unless inventory recorded. Inferred a general service.	Used only to take up a personal right. Inferred universal representation. Did not fall by death. Representation could be limited by inventory.
AFTER 1847.	Precept of sasine inserted on which sasine could be taken, and confirmation got. Representation limited to lands.	Same as above, with specification in place of inventory.
1858.	Precept of sasine unnecessary. Decree of service could be recorded.	No change.
1868.	Decree did not fall by death. Equivalent to a disposition.	No change.
1874.	No change.	Representation limited to the value of estate. Equivalent to a general disposition.

Old Form of Service—

1. Brieve of inquest from Chancery, retourable.
2. Tried by judge and jury of fifteen, after publication.
3. They tried the following questions:—

General Service—(1.) Whether ancestor at peace with king.
(2.) Whether claimant next heir, and his age.

Special Service—(1.) Whether ancestor at peace, and date of his death.
(2.) Superior's name.
(3.) Holding.
(4.) Extent, old and new.
(5.) Whether claimant of lawful age.
(6.) In whose hands fee was since ancestor's death.

ENTRY OF HEIRS WITH THE CROWN.

	Ancestor entered with Crown.	Ancestor unentered.	
	Publicly infeft.	Base infeft.	Uninfeft.
BEFORE 1847.	1. Special service. 2. Precept from Chancery to Sheriff. 3. Instrument of sasine before next Whitsunday or Martinmas, and registered in sixty days.	*Midsuperiority*— 1. General service. 2. Charter of resignation. 3. Instrument of sasine. *Dominium utile*— 4. Precept of *clare constat.* 5. Instrument of sasine. *Consolidation*— 6. Procuratory of resignation *ad rem.* 7. Instrument of resignation *ad rem.*	*If ancestor had Crown charter of resignation*— 1. General service. 2. Instrument of sasine. 3. Crown charter of confirmation. *If ancestor had disposition only*— 1. General service. 2. Crown charter of resignation. 3. Instrument of sasine. *Or,* 1. General service. 2. Instrument of sasine. 3. Combined charter.
AFTER 1847.	1. General or special service. 2. Precept from Chancery to a notary. 3. Instrument of sasine. *Or,* 1. Special service containing precept of sasine. 2. Instrument of sasine. 3. Crown charter of confirmation.	1. General service. 2. Combined charter. 3. Instrument of sasine. *Or,* 1. Special service containing precept of sasine. 2. Instrument of sasine. 3. Crown charter of confirmation.	No change.
1858.	1. General or special service. 2. Precept, or Crown writ of *clare constat.* 3. Instrument of sasine, or registration of writ. *Or,* 1. Special service. 2. Registration of special service. 3. Crown charter or writ of confirmation.	1. General service. 2. Crown writ of *clare constat*, or charter. 3. Registration of writ, or sasine. *Or,* 1. Special service. 2. Registration of special service. 3. Crown charter, or writ of confirmation.	1. General service. 2. Notarial instrument recorded, with 3. Crown writ of confirmation thereon. *Or,* 1. General service. 2. Crown writ of resignation on ancestors' disposition. 3. Registration of disposition and writ.
1868.	No change.	No change.	No change.
1874.	1. Special service. 2. Registration thereof. *Or,* 1. Special or general service. 2. Crown writ of *clare constat.* 3. Registration of both. *Or,* 1. Special or general service. 2. Notarial instrument thereon. 3. Registration of instrument.	Cannot occur.	1. General service. 2. Notarial instrument. 3. Registration of instrument.

ENTRY OF HEIRS WITH SUBJECT SUPERIORS.

	Ancestor publicly infeft.	Ancestor base infeft.	Ancestor uninfeft.
BEFORE 1847.	1. Special or general service (if required). 2. Precept of *clare constat.* 3. Instrument of sasine.	1. Special or general service (if required). 2. Combined charter of confirmation and precept of *clare constat.* 3. Instrument of sasine.	This column same as in entry with Crown.
AFTER 1847.	1. Service (if required). 2. Precept of *clare constat.* 3. Instrument of sasine. *Or,* 1. Special service. 2. Instrument of sasine. 3. Charter of confirmation.	1. Service (if required). 2. Combined charter of confirmation and precept of *clare constat.* 3. Instrument of sasine. *Or,* 1. Special service. 2. Instrument of sasine. 3. Charter of confirmation.	
1858.	1. Service (if required). 2. Writ of *clare constat.* 3. Registration of writ. *Or,* 1. Special service. 2. Registration thereof. 3. Writ of confirmation.	1. Service (if required). 2. Writ of *clare constat.* Which confirmed prior deeds. 3. Registration of writ. *Or,* 1. Special service. 2. Registration thereof. 3. Writ of confirmation.	
1868.	No change.	No change.	
1874.	1. Special service. 2. Registration thereof. *Or,* 1. Service (if required). 2. Writ of *clare constat.* 3. Registration of writ. *Or,* 1. General service. 2. Notarial instrument. 3. Registration of instrument.	Cannot occur.	

BURGAGE TENURE.

The disposition is the same as in feudal subjects, except—(1) The obligation to infeft (which was burgage); (2) Clause of resignation only; and (3) No precept of sasine.

BEFORE 1845.	Symbolical delivery on ground, and instrument of resignation and sasine expede by Town Clerk, and recorded in sixty days.
AFTER 1845.	The same, but symbols allowed to be delivered in Council Chambers. Notary's docquet unnecessary.
1847.	The symbolical delivery dispensed with. Instrument of resignation and sasine could be recorded during grantee's life.
1860.	1. As before; or, 2. By recording conveyance in burgh register; or, 3. By recording notarial instrument in do.
1874.	Abolishes distinction between burgage and feu holdings, except as to register. Title completed in same way in both cases, and in burgage subjects recorded in Burgh Register.

ENTRY OF HEIRS—BURGAGE.

	Ancestor infeft.	Ancestor uninfeft.
BEFORE 1847.	1. Claim presented to bailie. 2. Bailie went to lands and took a proof of propinquity. ✱ 3. Granted infeftment. (symbolic) ✱ 4. Instrument of cognition and sasine expede by Town Clerk, and recorded within sixty days.	1. General service. 2. Instrument of resignation and sasine recorded.
AFTER 1847.	As above; but Took place in Council Chamber. Symbols dispensed with.	As above.
1860.	1. As above; or, 2. Writ of *clare constat;* or, 3. Special service.	1. As above; or, 2. General service and notarial instrument.
1874.	As in feudal subjects; but recorded in Burgh Register.	As in feudal subjects; but recorded in Burgh Register.

✱ Proof of propinquity: Ancestor infeft and predeceased
Witnesses examined as to propinquity of heir.

✱ Symbolic Infeftment: Bailie gave earth & stone or hand & staple
Heir took hold of both staple: entered house: bolted door
Then heir came out & took instrument

CONSOLIDATION OF PROPERTY AND SUPERIORITY.

A disposition by a vassal to a superior contained clause of resignation *ad rem*, but no obligation to infeft, or precept of sasine.

	Where either right acquired by conveyance.	Where vassal succeeds as heir to superior, or *vice versa*.
BEFORE 1845.	1. By forty years' prescription; or, 2. By act of resignation *ad rem*, followed by instrument of resignation, recorded within sixty days.	*Before 1858.* 1. Makes up title as heir. 2. Grants procuratory of resignation *ad rem* to himself. 3. Instrument of resignation *ad rem*, recorded within sixty days.
AFTER 1845.	1. As above; but an agent might appear for superior.	
1858.	1. By recording disposition, if it had clause of resignation *ad rem*; or, 2. By notarial instrument, if case admitted it; or, 3. Where disposition had only a general clause of resignation by instrument of resignation *ad rem*. Limit for recording abolished.	1. Makes up title as heir. 2. Grants procuratory of resignation *ad rem* to himself, and records it. Limit for recording abolished.
1874.	1. By prescription, forty years; or, 2. By minute of consolidation; or, 3. Instrument of resignation *ad rem* recorded.	1. By prescription; or, 2. Minute; or, 3. Instrument of resignation.

CASUALTIES DUE TO THE SUPERIOR.

Are contained in the *reddendo* clause of the charter, and are *debita fundi.*

The holdings were—(1) ward, (2) feu farm, (3) blench, (4) free burgage, (5) mortmain.

I. CASUALTIES FORMERLY EXISTING.

1. Personal services.
   Abolished by 1 Geo. I. c. 54, and converted to money.
2. Ward, or rent of lands during heir's minority.
   Might be taxed.
   Expired—males at 21, females at 14.
3. Recognition, or forfeiture of lands, if vassal conveyed to a stranger more than half of lands without superior's consent.
4. Marriage, or a fine on ward's marriage.
   Single or double avail.
5. Escheat, on non-payment of debt and denunciation.
   Single escheat, of all moveables.
   Liferent escheat, or liferent of lands.
   Ward-holding and casualties, Nos. 2, 3, and 4, peculiar thereto, abolished by 20 Geo. III. c. 50. Crown holdings converted into blench; subject holdings, into feu.
6. Disclamation, or forfeiture of land, if vassal disclaims superior without cause.
7. Purpresture, or forfeiture for encroaching on superior's land.
   Nos. 6 and 7 long since in disuse.

II. CASUALTIES NOW EXISTING.

1. Irritancy *ob non solutum canonem,* or forfeiture of feu holding, on two years' arrears of feu-duty existing.
2. Non-entry, or rents until heir entered.
   By Conveyancing Act of 1874, non-entry is abolished, and action of declarator and for payment of

casualty is substituted, after decree in which lands are in non-entry till casualty paid.

3. Relief, or fine on entry of heir.
4. Composition, or year's rent on entering stranger.

By 1874 Act, corporations pay every twenty-fifth year. Annual value, under deductions for burdens, feu-duties, taxes, repairs, teinds. Where lands sub-feued, one year's sub-feu-duty is composition.

The Act of 1874 provides for the redemption of all casualties by § 15 et seq.

FORFEITING, OR SOPITING, SUPERIORITIES.

BEFORE 1847.	1. Under 1474 Act, charge to superior to enter. 2. Declarator of tinsel against superior, and each in their order till charter got.
AFTER 1847.	*If Feu-duty under £5.* 1. Petition to Lord Ordinary to enter vassal, or give decree of forfeiture. 2. Decree recorded, and vassal held on forfeited *reddendo.* 3. Title confirmed by over-superior. *If Feu-duty over £5 or not.* 1. Petition to Lord Ordinary to forfeit duty and casualties until all expenses paid. 2. Entry from over-superior or Crown got. Superior could relinquish before decree extracted, by a minute and acceptance thereof.
1858.	1. As above ; or, Superior can relinquish without judicial proceedings, by— 1. Deed of relinquishment and minute of acceptance. 2. Writ of investiture by over-superior recorded.
1868.	No change.
1874.	Entry abolished.

TRANSMISSION AND EXTINCTION OF HERITABLE SECURITIES.

To Assignees.		To Heirs and General Disponees.		Extinction.
		Ancestor infeft.	Ancestor uninfeft.	
BEFORE 1845.	As feudal subjects.	As feudal subjects.	As feudal subjects.	By discharge and renunciation.
AFTER 1845.	1. As before. 2. By assignation as in Act, recorded. 3. By notarial instrument on assignation, recorded.	1. As formerly. 2. Heirs, by writ of acknowledgment, or general service, and notarial instrument. 3. General disponees, by notarial instrument on will. 4. Adjudgers, by recording abbreviate.	1. General service and infeftment on bond, or assignation. 2 General service and notarial instrument recorded alone, or with bond. 3. Adjudgers, by notarial instrument.	1. As above ; or, 2. By discharge under Act.
1858.	As above.	1. As formerly ; or, 2. Heirs by writ of *clare constat*.	By notarial instrument.	As above.
1868.	As above.	*Cr. intestate.*—Executors by notarial instrument. *Do.* *Executors excluded.*—Heir by writ of acknowledgment, or service, and notarial instrument. *Cr. testate.*—Executors by writ of acknowledgment, or notarial instrument. *Do.* *Executors excluded.*—Notarial instrument.	By notarial instrument.	As above.

COMPLETION OF DISPONEE'S TITLE.

	Disponer infeft.		Disponer uninfeft.
	Entered.	Unentered.	
BEFORE 1845.	1. Symbolical delivery, instrument of resignation thereon, charter of resignation and sasine. 2. Sasine, and charter of confirmation.	1. Combined charter of confirmation and resignation and sasine. 2. Sasine and charter of confirmation of all unconfirmed deeds.	1. Disposition and assignation, sasine thereon, and confirmation. 2. Disposition and assignation, resignation and sasine. 3. Combined charter and sasine.
AFTER 1845.	1. Charter of resignation and sasine. 2. Sasine, and charter of confirmation. Superior bound to grant charter.	No change.	No change.
1858.	1. Registration of deed, and charter or writ of confirmation. 2. Charter or writ of resignation, and registration thereof.	1. Registration of deed and charter or writ of confirmation. 2. Infeftment on precept in seller's disposition and confirmation. 3. Notarial instrument recorded with disposition to seller, and confirmation. 4. Writ of resignation on procuracy by seller, and registration thereof. 5. Combined charter, and registration thereof.	1. Disposition and assignation, and infeftment on same, and precept to seller, and confirmation or resignation. 2. Assignation, either on disposition or apart, and recording both, and confirmation or resignation. 3. Assignation and notarial instrument thereon recorded, and confirmation or resignation.
1868.	No change.	No change.	No change.
1874.	1. Recording disposition. 2. Notarial instrument on disposition. Entries with superior abolished.	Cannot occur.	1. Assignation, and recording it with disposition. 2. Notarial instrument on disposition, and assignation.

TO COMPLETE TITLE OF JUDICIAL FACTORS.

	Moveables.	Heritage.	Heritable Securities.
BEFORE 1858.	1. If owner alive, by possession. 2. If owner dead, by confirmation.	1. By adjudication, charter, and sasine. 2. By disposition from owner.	1. By adjudication and recording abbreviate. 2. By assignation from owner.
AFTER 1858.	As above.	1. As above ; or 2. Petition to Court, act and warrant, and confirmation thereon ; or 3. If owner infeft, act and warrant recorded. If owner uninfeft, notarial instrument on act and warrant. 4. If title in any others than owner, by declaratory adjudication, charter, and sasine, or conveyance from them.	1. As above ; or 2. Petition to Court, and If owner infeft, act and warrant recorded. If owner uninfeft, notarial instrument on it. 3. If title in any others than owner, by declaratory adjudication, charter, and sasine, or conveyance from them.
1860.	As above.	As above.	As above.
1868.	As above.	1. Petition to Court, and act and warrant recorded. 2. By recording notarial instrument on it. 3. By adjudication.	1. By recording act and warrant. 2. By recording notarial instrument on it. 3. By adjudication.

The Act of 1858 allowed the above forms to all factors, trustees in sequestrations, and liquidators.

TO COMPLETE TRUSTEES' TITLE.

	To Moveables.	To Heritage.	
		Where deceased infeft.	Where deceased uninfeft.
BEFORE 1858.	1. Possession. 2. Special conveyance in settlement. 3. Confirmation.	1. Heir could pass over deed. 2. If executive clauses in will, by confirmation or resignation. 3. If no executive clauses, by adjudication in implement against heir, and charter of adjudication and sasine. 4. By conveyance from heir.	1. Heir could pass over deed. 2. If will contained assignation to writs, by resignation or confirmation on unexecuted procuratory. 3. If will did not contain assignation to writs, by action of constitution and adjudication in implement against heir, and charter of adjudication and sasine.
AFTER 1858.	No change.	1. As above. 2. By registration of deed, if it had particular description. 3. By notarial instrument on deed, if it contained a conveyance of heritage.	1. As above. 2. By notarial instrument, if deed contained assignation to writs. 3. By adjudication, if no assignation to writs. 4. By notarial instrument, if special conveyance in will.
1868.	No change.	No change.	No change.
1874.	No change.	1. If special conveyance of lands, by recording deed. 2. Notarial instrument even where no conveyance of lands to trustees.	1. Notarial instrument, even where no conveyance of lands to trustees.

POWERS OF TRUSTEES.

These are—

1. Ordinary or usual Powers.

As payment of debt, management of property, making up titles to heritage, to invest, to litigate, etc.

2. Special Powers.

Are all those mentioned in will, and sometimes they are implied, when estate could not be administered without exercising them.

3. Statutory Powers.

By statute gratuitous trustees have following powers :—

1861 Act.
- To resign.
- To assume.
- Majority to be quorum.
- Each liable only for intromissions.

1863 Act.
- Above extended to all trusts.
- *Ex officio* trustees are gratuitous.

1867 Act.
- To appoint factors and agents.
- To discharge trustees.
- To grant leases.
- To uplift, discharge, and assign debts.
- To compromise or arbitrate.
- To grant necessary deeds.
- To pay truster's debts without creditors constituting them.
- To invest in certain stocks.

1871 Act.
- To invest in certain stocks.

1884 Act.
- To invest in certain stocks.

1887 Act.
- To abate rents.

For the following powers, if not given under will, trustees must apply to Court.

1867 Act.
- To sell.
- To feu or grant long leases.
- To borrow money on heritable security.
- To excamb.
- To advance capital.
- To redeem debt on land, instead of buying more for same heir.

1884 Act.
- To invest in Colonial stocks.

PRESCRIPTION AND LIMITATION.

I. **Is Positive or Negative.**

Does not run against minor, nor against those barred by legal incapacity from acting.

II. **Rights incapable of Prescription.**

1. *Res meræ facultatis.*
2. Exceptions competent to person for eliding an action if founded on a discharge.
3. Obligations for yearly payments.
4. Rights by *non utendo*, unless prescription establishes right in some other person.
5. Feu-duties.
6. Tithes.

III. **Interruption by new Obligation, Citation, Action, or Diligence, stops running of Prescription.**

IV. **Periods of Prescription.**

Three years (triennial).—Spulzies, ejections, servants' fees, rents, and like debts, accounts, arrestments (if under £8, 6s. 8d., three months).

Can be established by writ or oath only afterwards.

Five years (quinquennial).—Stipends, multures, maills and duties, sales of moveables, location, hiring, loan, deposit, pledge.

Writ or oath afterwards.

Six years (sexennial).—Bills of exchange.

Writ or oath afterwards.

Seven years (septennial).—Cautionary obligations.

Ten years (decennial).—Actions of count and reckoning against tutors.

Twenty years (vicennial).—Holograph writings, services, reductions of retours.

Forty years.—All obligations, heritable or moveable.

By 1874 Act, possession on a title of land for twenty years and, including minorities, thirty years, makes title good.

JUDICIAL SALE OF LAND.

ACTS 1681, c. 17, AND 1690, c. 20.

Ranking and Sale.

1. Competent to creditors with real rights, and in possession.
2. Debtor must be bankrupt.
3. Must include whole lands.
4. Sale takes place in court, and price is consigned.
5. Decree of sale is equivalent to a disposition of lands free from debt.

   A heritable creditor is not hindered from proceeding under his power of sale.

   A holder of missive of sale can adjudicate in preference.

Cognition and Sale.

1. Of pupil's lands at instance of pupil and tutors.
2. When land overloaded with debt, no funds to aliment pupil, and creditors are threatening to adjudge.
3. Court authorizes tutors to sell, and creditors are ranked on price.

Judicial Sale by Apparent Heir.

1. By heir who has succeeded, but not completed his title.
2. Is authorized by 1695, c. 24.
3. Competent whether estate is bankrupt or not.
4. Privilege is lost when heir serves in such a way as to render himself liable universally for ancestor's debts.
5. Creditors cannot interfere with sale, which is in same form as a ranking and sale.

Division and Sale.

1. By heirs-portioners or joint proprietors.
2. Sale is by parties under order and authority of Court.
3. Sale will only be ordered when subject cannot be divided.

   Excluded as regards lochs, superiorities, and conjunct rights to husband and wife.

DESTINATIONS IN FEUDAL SUBJECTS.

General rule is intention of granter, but technical terms are given their settled meaning.

I. CONJUNCT RIGHTS OF HUSBAND AND WIFE.

Presumption is that Fee is in Husband.

Husband and wife	in conjunct fee.	Generally import a fee in husband, and a liferent to the wife.
	in conjunct fee and liferent.	
Husband and wife in liferent,	and heirs of marriage in fee.	
	and heirs of body in fee.	
	and heirs in fee.	

Exceptions—

Where husband's right limited to a liferent.

Where preference given to wife, or her heirs.

Where wife has power of disposal.

Where subjects come from wife or her relatives, and not as tocher.

Where conveyance to spouses and survivor and their heirs (fee in survivor).

II. CONJUNCT RIGHTS TO PARENT AND CHILD.

In conveyances by third parties or parents to receive instant effect, and marriage contracts, presumption is that fee is with parent.

1. **Parent in Liferent, and Children Unnamed in Fee.**

Fee is in parent.

Exceptions—

Where liferent is taxed by words "only," "allenarly," or "alimentary."

Where the liferent only to parent is meant.

Where trustees hold the funds.

2. Parent in Liferent, and Children *Nominatim* in Fee.
   Fee is in children.
   Exceptions—
   Where powers of a fiar are reserved to parent.
   Where power to burden or dispone given to parent.
   Where conjunct fee and liferent to spouses for wife's liferent only, and children in fee.

III. CONJUNCT RIGHTS TO STRANGERS.

A. and B. conjunctly, and their heirs.	*Pro indiviso* half each.
A. and B. in conjunct fee and liferent, and their heirs.	*Pro indiviso* half each, with liferent of whole to survivor.
A. and B. and longest liver, and their heirs.	Fee in longest liver, but creditors of each may attach.
A. and B. jointly, and B. if he survive, and his heirs.	B. sole fiar if he survives, and if he does not survive half to A. and half to B.'s heirs.
A. and B. jointly, and heirs of B.	B. is fiar of whole. A. liferenter only.
A. B. C. and D. to each other, and to heirs of last survivor.	Fee in last survivor.
A. and B. equally in liferent, and heirs of B. in fee.	A. has liferent of half only. B. whole fee.

IV. EXAMPLES.

1. **Husband and Wife.**
   (1.) Where Husband fiar.
   Husband to spouses in conjunct fee and liferent, and their heirs.
   Wife to spouses in conjunct fee and liferent, and heirs of the marriage; whom failing, husband's heirs.
   Wife to husband in liferent, and heirs of marriage in fee; whom failing, husband and his heirs.
   Wife to spouses in conjunct fee and liferent, and survivor and heirs of future marriage in fee.

(2.) Where Wife fiar.

Wife to spouses in conjunct fee and liferent, and children of marriage; whom failing, our nearest heirs.

Wife to spouses and longest liver in conjunct fee and liferent, and children of marriage; whom failing, the longest liver, and his or her heirs.

Wife to spouses and survivor in conjunct fee and liferent, and, failing children, wife's heirs.

Husband to spouses in conjunct fee and liferent, with power of disposal to wife.

2. **Parent and Child.**

(1.) Where Parent fiar.

Parent to spouses in liferent and children unnamed in fee.

Father to son in liferent and heirs of son's body in fee. Son fiduciary fiar.

To spouses and longest liver in conjunct fee and liferent, for wife's liferent allenarly, and son named in fee, and power to father to burden.

To parent in liferent and children named in fee, with power of disposal to parent.

(2.) Where Child fiar.

To parent in liferent allenarly, and heirs of his body in fee.

To trustees for parent in liferent and children in fee.

To parent in liferent and child named in fee.

V. IN MOVEABLES.

In conjunct rights to spouses the feudal rules are not so strictly followed out, and the literal meaning is taken. But a destination to parent in liferent and children in fee gives fee to parent.

CLASSES OF HEIRS.

Heir in *mobilibus*,	Executor.
Heir in heritage,	Whoever takes heritage by ordinary legal rules of succession.
Heir-apparent,	One to whom succession has opened, but who has not taken it up. In entails it means next heir who must succeed if he survives.
Heir-presumptive,	In entails. One who will succeed if he survives, but whose right may be defeated by birth of a nearer heir.
Heirs-portioners,	Sisters, taking equally.
Heir whomsoever,	Synonymous, and means one who takes succession by ordinary rules of law.
Heir whatsoever,	
Heir of line,	
Heir-at-law,	
Heir general,	
Heir male,	Nearest male heir connected by males.
Heir male of the body,	Sons and their male issue.
Heir female,	Male or female connected by female.
Heirs of the marriage,	Sons in their order, and, failing sons, sisters, as heirs-portioners.

INSTITUTION AND SUBSTITUTION.

I. INSTITUTE.

Is the direct and immediate disponee in a deed, and takes from either dead or living predecessor. He requires no service, and takes infeftment on deed.

Case 1. Disposition by A. to B.; whom failing, to C. B. is institute.

„ 2. *Mortis causa* disposition by A. to the heirs of his body; whom failing, to B.

A.'s heirs are institutes. Failing them, B. is institute.

Case 3. Disposition A. to himself and the heirs of his body; whom failing, to B.
A. is institute.

II. SUBSTITUTE.

Is the heir of a destination called after, and in case of failure of, the institute or prior substitutes.
Usually marked by words "whom failing."
Substitute requires service to complete title.

Case (1 above). On B. succeeding, C. is substitute.
„ (3 above). On heirs succeeding, B. is substitute.
„ **4.** Disposition by A. to B. and the heirs of his body; whom failing, to C. and the heirs of his body.
On B. succeeding, C. and his heirs are substitutes.

III. CONDITIONAL INSTITUTE.

Is a disponee, but with a condition attached, which must be purified before he succeeds. If condition not purified, he can never succeed.

Case 5. A., "in case of his dying without issue," dispones to B. If A. leaves no issue, B. is conditional institute. But if issue survive, B. can never succeed.
„ **6.** *Mortis causa* deed by A. to B. and the heirs of his body; whom failing, to C.; whom failing, to D.
B. predeceases A. without issue. C. conditional institute.
B. predeceases A. leaving issue. Issue conditional institutes.
B. predeceases A. without issue, and C. survives and dies without making up title. C. is institute, D. substitute.

The title conditional institute has been further extended, as in Fogo's case.

Case 7. Fogo's. *Mortis causa* deed to A. and heirs of his body; whom failing, to B. and heirs of her body; whom failing, to C. and heirs of her body. A. and B. predeceased testator without issue. C. served as heir to A. as the institute, and made up title by resignation.

Majority of Court held that C. was *constructive* conditional institute, and that right vested in her without service.

Minority of Court held that C. was substitute, and must serve.

Whole Court held C.'s title good, as, if substitute, her title was correctly made up, and, if institute, service did no harm.

Case 8. Hutchison's. *Mortis causa* disposition to A.; whom failing, to B.; whom failing, to C.

If A. predeceases testator, B is conditional institute; and if A. and B. both predecease, C. is conditional institute.

These cases are a departure from the doctrine of *proper* conditional institution, in which, if the condition is not purified, the conditional institute never succeeds. The heirs taking under prior investitures evacuate disposition.

In constructive conditional institution, the effect of non-purification of the condition is to make the conditional institute a substitute.

The test, to determine whether a person is institute or substitute, is the necessity for service.

ENTAILS.

I. ENTAILING.

BEFORE 1848.	1. Three cardinal prohibitions } Necessary. 2. Irritant and resolutive clauses } 3. Must be recorded in Entail Register. 4. Instrument of sasine and future titles must contain irritant and resolutive clauses. Heir could not disentail. Heir could only break the condition not prohibited, and this did not invalidate the others.
AFTER 1848.	1. Three cardinal prohibitions necessary. 2. Clause of registration in entails, instead of irritant and resolutive clauses. 3. Instrument of sasine must contain these. Heir could disentail. If one condition bad, all were invalidated.
1858.	1. Clause of registration only necessary which must be inserted in all future titles.

II. DISENTAILING.

	Old Entails.	New Entails.
BEFORE 1882.	1. *Heir born after 1st August 1848*— If of full age, without consents. 2. *Heir born before 1st August 1848*— With consent of heir-apparent, if born after 1st August 1848, and twenty-five years of age. (After 1875, twenty-one years.) 3. *In either case*— (1.) If only heir in existence, and (till 1875) unmarried, without consent. (2.) With consent of whole heirs, if less than three. (3.) With consent of three next heirs, or heir-apparent, if twenty-five (1875, twenty-one), and next two heirs.	1. *Heir born after date of entail*— Without consent if of full age. 2. *Heir born before date of entail*— With consent of heir-apparent if twenty-five (1875, twenty-one), and born after date of entail.
AFTER 1882.	Same consents for new as for old entails.	

1875 Act.

Consents of next two heirs to nearest heir can be dispensed with by Court.

1882 Act.

Consent of heir-apparent, or nearest heir, can be dispensed with by Court.

1848 Act.

Creditors can disentail if no consents required.

1882 Act.

Future creditors can disentail.

Heir in possession can, without consents, get an order for sale of estate and investment of proceeds under entail.

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1. To make entails effectual against third parties there must be—
   (1.) Registration in sasines, with prohibitions, conditions, and irritancies.
   (2.) Registration in Register of Tailzies.
2. (1.) Where deed not registered in sasines, and if heir has no other title but tailzie, creditors cannot attach.
   (2.) Where deed not registered in sasines, and heir is also heir-at-law, creditors can attach.
   (3.) Where deed not registered in tailzies, creditors can attach in either case.
3. Fetters of entail do not bind the maker of it, unless it is a mutual and onerous entail.
   (1.) They are against—(*a*) alienation, (*b*) contraction of debt, and (*c*) alteration of order of succession.

POWERS OF HEIR OF ENTAIL.

I. PROVISIONS TO WIFE AND CHILDREN.

1. **Aberdeen Act.**
   Applied to old entails only till 1868, and was then extended to new entails and to heir-apparent.
   Heir in possession not to be deprived of more than two-thirds free rent. Widow allowed one-third free rental. Children not more than three years' free rent.
2. **Entail Amendment Act, 1868.**
   Heir-apparent, with consent of heir in possession, may grant provisions to wife and younger children, but postponed to provisions by heir in possession.

II. EXCAMBIONS.

1. **Montgomery Act.**
   Applied to old entails only till 1868. Only allowed 30 acres Scots arable, or 100 acres Scots hill ground. By 1868 Act, 300 acres allowed.
2. **Rosebery Act.**
   Allowed one-fourth of estate. Notice to heirs required.
3. **Rutherfurd Act.**
   Allowed whole estate. Consents of heirs, as in a disentail, necessary.

III. FEUS AND LEASES.

1. **Entail Sites Act.**
   For churches, one-fourth acre; burying-ground, one acre; house for minister or schoolmaster, one-eighth acre; school, one acre; garden, half acre.
2. **Rutherfurd Act.**
   Whole estate (except mansion), with consents as in a disentail, or one-eighth of estate, with consent of Court.
3. **Montgomery Act.**
   Improving leases for fourteen years and a life.
   Building leases for ninety-nine years.

Lease of one-eighth of estate, with consent of next heir and Court.

4. **Rosebery Act.**

Agricultural leases, twenty-one years.

Mineral leases, thirty-one years.

All extended to new entails by 1853 Act.

IV. TO BURDEN WITH DEBT.

1. **Montgomery Act.**

For permanent improvements, not exceeding three-fourths of four years' free rent; or, for mansion, not exceeding two years' free rent. Notice to heirs required.

2. **Rutherfurd Act.**

(1.) For improvements before 1848.

Annual rent for three-fourths of amount in decree during life of heir, and for twenty-five years after at £7, 2s. per cent.

(2.) For improvements after 1848.

Annual rent for whole sum for twenty-five years, or bond for two-thirds of same.

Executors of deceased heir can get charge made.

3. **Entail Amendment Act, 1875.**

Allows charge for contemplated improvements.

Legatees of deceased heir can charge.

4. **Entail Amendment Act, 1882.**

Allows bond for three-fourths instead of two-thirds.

V. TO BORROW MONEY, SELL, CHARGE, LEASE, OR FEU.

1. **Rutherfurd Act, sec. 4.**

With authority of Court, and same consents as are required to disentail.

Entail Acts.

1770, Montgomery Act, 10 Geo. III. c. 51.

1824, Aberdeen Act, 5 Geo. IV. c. 87.

1836, Rosebery Act, 6 & 7 Will. IV. c. 92.

1840, Entail Sites Act, 3 & 4 Vict. c. 48.
1848, Rutherfurd Act, 11 & 12 Vict. c. 36.
1853, Entail Amendment Act, 16 & 17 Vict. c. 94.
1868, do. 31 & 32 Vict. c. 84.
1875, do. 38 & 39 Vict. c. 61.
1882, do. 45 & 46 Vict. c. 63.

LEASES.

1. Leases are contracts, and come under the general rules of law as to parties and their capacity to enter into same.
2. Before 1449 they were good only against heirs.
3. Act of 1449, c. 7, declared them good also against singular successors, if they had the following requisites:—(1) Writing, if for more than a year; (2) Definite ish; (3) Definite rent; (4) Followed by possession; (5) Of land or buildings thereon.

The Act does not extend to game, fishing, etc., leases.

I. LANDLORD'S OBLIGATIONS.

Right to grant lease.
To give possession and maintain same.
To indemnify for eviction.

II. TENANT'S OBLIGATIONS.

To take possession and retain the same.
Not to invert possession.
To pay rent.
To work in proper manner.
To remove at expiry of lease.

III. REMEDIES FOR RECOVERY OF RENT.

Summary diligence under lease.
Action of maills and duties.
Action for—(1) Caution and removing; (2) Irritancy and removing.
Where hypothec (as urban subjects, dwelling-houses, shops, factories, mines, quarries, fisheries), by sequestration and sale.

IV. REMOVING.

1. During Currency.

BEFORE 1883.	AFTER 1883.
1. Renunciation, express or implied. 2. Breaks. 3. Conventional irritancy. 4. Legal irritancy under 1756 Act. (1.) Action of removing, on two years' rent being unpaid. (2.) Action for caution for five years' rent, or removing on one year's rent being unpaid. (3.) By Act of 1880, the periods are one year's and six months' arrears respectively. 5. Irritancy *ob non solutum canonem.* When rent two years in arrear.	Nos. 1, 2, 3, and 4 (1). 5. By Agricultural Holdings Act, action for removing if rent is six months in arrear, unless caution found for arrears and one year's rent.

Urban Subjects.

Action for plenishing order or damages, failing which summary ejection.

2. At Ish.

(1.) Where obligation to remove in lease, or where such a letter granted.

(*a*) Forty days' warning before ish.

(*b*) Ejection at term of ish.

By 1883 Act, one year's notice to remove required.

(2.) Where obligation to remove or not.

(*a*) Solemn removing under Acts of 1555, Act of Sederunt, 1756, or Sheriff Court Act, 1853.

(1) Action raised forty days before term of ish, or forty days' warning followed by action.

(2) Decree and charge to remove.

(3) Ejection.

By 1883 Act, one year's notice to remove required.

(*b*) Summary removing.

Same as above.

(*c*) Summary ejection.

Against vitious possessors without title.

(1) Petition to eject.

(2) Ejection.

Urban Subjects.

Same as solemn removings above.

The terms of removal are now 28th May and 28th November (Removal Terms Act, 1886).

The following Acts should be read in connection with this subject:—

Agricultural Holdings Act, 1883, 46 & 47 Vict. c. 62.

Abolition of Hypothec Act, 1880, 43 Vict. c. 12.

Registration of Leases Act, 1857, 20 & 21 Vict. c. 26.

This last Act allows leases for thirty-one years or more, and of land under fifty acres in extent, to be recorded in Sasine Register.

CITATION.

I. MODES OF CITATION.

1. **Personal.**
   Delivery to defender of copy summons, and citation thereon.
   Decree in absence has effect of decree *in foro* sixty days after charge, or twenty years after where no charge.
   Where defender refuses to accept, service is good.
2. **Dwelling-place** (forty days' residence necessary).
   Copy left with some one in house, if defender absent.
   Lock-hole citation, or leaving summons where defender has removed from house for good, incompetent (Citation Act, 1871).
3. **Edictal Citation.**
   Where party furth of Scotland, copy left at office of Edictal Citations, Edinburgh.
   Where defender resident in England or Ireland, notice (a copy) must be sent.
4. **Registered Letter.**
   (1.) By messenger or law agent.
   (2.) Registered letter, containing copy summons, posted to defender's last known address, or office of Edictal Citations.
   (3.) If not delivered, to be returned to Clerk of Court.
   (*a*) If address wrong, new service must be made.
   (*b*) If address correct, service good.

General Rules.

Warrant for personal citation does not include edictal citation.
Citation may be dispensed with.
Court may dispense with citation.

II. CITATION IN SPECIAL CASES.

1. **Corporations at Common Law.**
   Served on preses at meetings or individuals. Usually service allowed, by Companies Act, on principal officer or corporate company by its name.
2. **Burghs.**
   Service on Provost, Magistrates, and Town Council for burgh at meeting.
3. **Presbytery.**
   Moderator at meeting or individual members.
4. **Companies under Companies Clauses Act, 1845**; and
5. **Railway Companies under Railway Companies Clauses Act, 1845.**
   Service at principal office on principal officer.
6. **Industrial and Provident Companies.**
   Service on secretary.
7. **Joint-Stock Companies.**
   Service at registered office.
8. **Road Trustees.**
   Service on clerk or treasurer.
9. **Commissioners of Supply.**
   Service on Clerk of Supply.
10. **Commissioners of Police.**
    Service on clerk.
11. **Parochial Board.**
    Service on inspector.
12. **School Board.**
    Service on chairman at meeting or all members.
13. **Crown.**
    Service on Lord Advocate personally or at residence.

INDUCIÆ ON SUMMONSES, DECREES, ETC.

Warrant.	Parties.		
	Within Scotland.	In Orkney or Shetland.	Furth of Scotland.
	Days.	Days.	Days.
Summons, Court of Session, . .	7	14	14
„ Sheriff Court, . .	7	14	...
„ Small Debt, and Debts Recovery, . .	6	...	...
Decree, Court of Session, . .	15	40	14
„ . Sheriff Court, . .	7	14	14
„ Small Debt, and Debts Recovery, . .	10	...	...
„ Sheriff Court, removing, ...	2	...	...
„ Exchequer Court, .	6	6	6
„ Teind Court, . .	10	...	60
Protests, registered, . . .	6	40	14
Extracts of deeds, ...	6	6	14
„ from sasines, . . .	6	6	21
Certificates of judgment, . .	15	40	14

COURT OF SESSION PRACTICE.

I. JURISDICTION.

1. Persons.

The Court has jurisdiction over those who—

(1.) Reside in Scotland, or have a permanent, real, or derivative domicile there.

(2.) Have resided for forty days prior to action, or, having resided for that time, have not been absent forty days.

(3.) Are personally cited (in some cases), or arrested *meditatione fugæ*.

(4.) Have heritage in Scotland, or moveable property which has been arrested, *ad fundandam jurisdictionem*.

NOTE.—Nos. 2, 3, and 4 do not apply to questions of status.

(5.) Are foreigners, but bring an action in Scotland against a Scotchman. (Reconvention.)

2. Subject-Matter.

(*a*) Exclusive jurisdiction.

(1.) Heritable rights.
(2.) Questions of status.
(3.) Declaratory actions.
(4.) Reductions.
(5.) Suspensions.
(6.) Adjudications.
(7.) Cases under *nobile officium* of court, such as petitions for custody of children; for factors, etc.; for special powers; removal of trustees; recal of arrestments; sequestration of landed estates pending litigation and appointment of factor; appointment of public officers.

(8.) Teind, Exchequer, and Consistorial cases.

NOTE.—There are exceptions to Nos. 1, 2, 3, 4, 5, and 6 which will be found in Sheriff-Court Practice.

(*b*) Concurrent jurisdiction.

In all other cases, except where excluded, as below.

(*c*) Excluded jurisdiction.

(1.) Cases under £25.

(2.) Criminal cases.

(3.) Ecclesiastical cases, and certain others.

II. TABLE OF PRACTICE.

1. Summons signeted, served, on *inducie* of seven days (if defender in Scotland), or fourteen days (if out of Scotland).
2. Called.
3. Appearance entered within two days.
4. Defences lodged ten days thereafter.

If no appearance entered, or no defences lodged.

(1.) Summons is enrolled in undefended roll and decree got.

(2.) Defender can be reponed within ten days of decree.

(3.) Decrees in absence have effect of decrees *in foro*.

On expiry of sixty days after charge given, when { 1. Personal service made; or 2. Appearance entered.

On expiry of twenty years, { When no charge competent.

Action of reduction.

(1.) Preliminary defences.

(2.) Enrolled for order to satisfy production.

(3.) Production satisfied.

(4.) Defences on merits lodged.

5. Within eight days from lodging of defences, pleadings are printed, and two prints lodged in process.

6. Case is put to roll, from four to six days thereafter.
7. Record closed, and case sent to debate or procedure roll, or proof fixed.
8. Two copies closed record lodged within four days.

III. RECLAIMING.

1. Against interlocutors, which dispose in whole or in part of merits of case.
   (1.) If deciding whole case, within twenty-one days.
   (2.) If deciding part of case, within twenty-one days, and within ten days after leave given.
2. Against interlocutors, which do not dispose of any part of merits.
   (1.) Within ten days of date and leave.
3. Against interlocutors, settling mode of proof or trial by jury.
   (1.) Within six days.
4. Against interlocutors, to which no special rules apply.
   (1.) Bill Chamber cases and sequestrations, fourteen days.
   (2.) Petitions before Junior Lord Ordinary, eight days.
   (3.) Recal of arrestments, ten days.

Extracts can be got nine days after date of interlocutor, unless appealed.

IV. APPEAL FROM INFERIOR COURTS.

Appeals may be against the following:—

1. Interlocutory judgments.
2. Final judgments.
3. For jury trial if above £40 (petition to Sheriff for leave).
4. *Ob contingentiam* (motion made in Court of Session).
5. Actions as to heritage, declarators, against foreigners, and under Employers' Liability Act, may be removed to Court of Session.

V. TABLE OF PRACTICE IN APPEALS.

1. Note of appeal written on interlocutor sheet within fourteen days, or if no extract issued, within six months.
2. Clerk of Court gives notice to other party within two days; and
3. Transmits process to Court of Session within two days.
4. Within fourteen days, appellant prints and boxes record (unless order dispensing with printing got in eight days), and lodges prints in process.
5. Case appears in single bills, and is sent to roll.

VI. APPEAL TO HOUSE OF LORDS.

1. Must be within one year, or before extract.
2. Only allowed against final interlocutors by Inner House, or with leave against other interlocutors.

VII. EXTENSION OF JUDGMENTS.

1. Judgments of Court of Session can be executed in England or Ireland under—

   The Judgments Extension Act, 1868.
   Act of Sederunt pursuant thereto, 1871.

   (1.) Certificate of judgment issued.
   (2.) Registered in foreign court.
   (3.) Proceedings same as if judgment were issued by the Court where registered.
2. Witnesses residing in England or Ireland can be cited to appear in Scotland under—

   17 & 18 Vict. c. 34, 1854.

   (1.) Special warrant of citation issued.
   (2.) Served. Expenses must be prepaid.

   If default made—

   (1.) Certificate of default is issued to court in country where witness resides.
   (2.) Foreign Court takes proceedings against witness.

JURY TRIAL.

The cases for jury trial are actions for libel, nuisance, damages, and reduction. (Court of Session Act, 1850.)

The actions commence in the ordinary way, till after closing the record, when procedure is as follows:—

I. PROCEDURE.

1. Motion for jury trial granted by Lord Ordinary.
   Can be appealed from.
2. Issue lodged within eight days, and two days before adjustment.
   Counter issue, if any, lodged by defender in same time.
3. Case put to roll, and issue adjusted.
   Can be appealed from, or motion made to Division to vary issue, within six days.
4. Motion to appoint day for trial before Lord Ordinary, or notice of trial for Winter or Summer Vacation Sittings given.
   Notice can be countermanded and new notice given.
5. Trial must take place within twelve months; if not, motion for decree can be made to Division.
6. Eight days before trial, all documents, etc., to be used at proof must be lodged with clerk.

JURY.

Common Jury.	Special Jury.	Challenges.	Exemptions.
Are those who— 1. Have land of £5 annual value, or are worth £200 moveable property. 2. Are between twenty-one and sixty years.	*Are those who—* 1. Pay cess on £100 rental. 2. Pay £30 house-rent. 3. Have £100 real rent. 4. Have £1000 moveable property.	Each party has four peremptory challenges, and others only on cause shown.	Peers. Judges. Magistrates. Ministers. Lawyers. Doctors. Professors. Officers. Gaolers. Lighthouse-keepers.
Summoning. 1. Precept issued by process clerk to Sheriff-Clerk. 2. Sheriff-Clerk summons from thirty-six to fifty (one-third special), and twelve are chosen (four special, eight common).	*Summoning.* 1. Notice for special jury must be given within four days from fixing trial. 2. Order sent to Sheriff-Clerk to summon jury. 3. Sheriff-Clerk returns list of thirty-six. 4. Process clerk and agents reduce list to twenty. 5. Precept issued to Sheriff-Clerk to summon twenty. 6. Twenty summoned by Sheriff-Clerk and twelve chosen.		

7. Trial may be put off at any time before jury sworn.
8. After jury sworn, trial can only be abandoned by pursuer with leave, and defender abandoning must accept a verdict against him.
9. Case opened, evidence led, counsel address jury, and judge charges them.
10. Proof in replication of defender's proof only allowed on special cause shown.

11. Jury returns a verdict, special or general.
    Special—finding certain facts proven or not. General —finding an affirmative or a negative.
12. Verdict of majority may be returned after three hours' enclosure of jury, or taken before by consent. Jury discharged if no verdict in six hours.
13. If pursuer does not appear, verdict returned for defender. If defender does not appear, pursuer leads evidence and goes to jury for verdict.
14. With both parties' consent, case may be abandoned before verdict by withdrawing a juror.

II. APPLYING VERDICT.

1. Verdict is engrossed on issue by clerk.
2. Motion made in Division to apply same ten days after trial, or six days after session opens if trial in vacation.
3. Verdict may be amended by Division.
4. Verdict applied and decree granted by Division.
5. If less than £5 damages recovered, no expenses awarded unless judge certifies for same.

III. APPLICATION FOR A NEW TRIAL.

1. **Without Bill of Exceptions.**
   (1.) Motion to Division for rule on other side to show cause why new trial should not be granted.
   (2.) If rule granted, report of case got by motion to Lord Ordinary or Division, and lodged. Case put to roll, counsel heard, and new trial granted or refused.
   (3.) Grounds on which new trial will be granted.
      (*a*) Verdict contrary to evidence.
      (*b*) Excessive damages.
      (*c*) *Res noviter.*
      (*d*) Other causes essential to justice of case.
   (4.) Motion must be made within ten days of trial, or six days after session opens.

2. With Bill of Exceptions.

(1.) Exceptions must be taken during trial or charge, and noted by judge or counsel, and signed by judge.

(2.) Grounds of same.

(*a*) Undue admission or rejection of evidence.

(*b*) Erroneous direction, or omission, or refusal to direct on point of law.

(3.) Bill must be lodged, notice of motion given, and motion made within ten days of trial, or six days after session opens.

SHERIFF COURT PRACTICE.

Is now regulated by the Sheriff Courts Act of 1876.

I. JURISDICTION.

1. Persons.

The Court has jurisdiction over defenders in the following cases:—

(1.) Residence within jurisdiction for forty days, or less, with *animo remanendi.*

(2.) Personal service.

(3.) On contract within county, and personal service.

(4.) Having place of business within county.

(5.) Subjects in dispute in county.

(6.) Arrestment of ships, as against foreigners.

(7.) Reconvention.

2. Subject-matter.

(1.) Moveable rights—all.

(2.) Heritable rights, only as regards rights of possession of heritage; actions on personal contracts referring to heritage; marches and division fences; runrig lands; nuisances and damages arising from right of property; questions of title under £1000 value, or £50 per annum.

(3.) Questions of status, only as regards actions as to consequences of status.

(4.) Declaratory actions, only as regards servitudes, irritancies of feus, and long leases, if under £1000 value, or £50 per annum.

(5.) Reductions, only as regards bankruptcies, contracts under Employers and Workmen's Acts, indentures of apprentices.

(6.) Suspensions, only as regards those under £25.

(7.) Adjudications, only as regards those *contra hereditas jacenta,* where heir has renounced.

II. TABLE OF PRACTICE.

1. Petition lodged with Sheriff-Clerk and warrant for service got.
2. Petition served on seven or fourteen days' *induciæ*.
3. Appearance entered before expiry of *induciæ*.
   - If no appearance entered, decree of absence moved for and obtained.
   - Defender can be reponed within seven or fourteen days.
   - Decrees of absence have effect of decrees *in foro*.
   - After expiry of six months when—
     - (1.) Petition served personally.
     - (2.) Appearance entered.
     - (3.) Personal charge given.
   - After expiry of twenty years when—
     - No charge competent, and decree is obtained, as in Nos. 1 and 2 above.
4. Petition called on first court day after *induciæ*.
5. Defences due on that day, or adjourned court day seven days after.
6. Revisal of record allowed, or record closed.
7. When record closed, case put to roll for debate, or proof allowed.

III. APPEALS TO SHERIFF.

Appeal is competent against any interlocutor—

1. Disposing of whole case.
2. Granting or refusing interim interdict.
3. Granting interim decree for payment.
4. Making order *ad factum prestandum*.
5. Sisting action.
6. Allowing, limiting, or refusing proof.
7. When leave given, against any other interlocutor.

Practice in Appeals.

Within seven days the appeal is marked on the interlocutor sheet. If against final judgment, within one month, unless sooner extracted.

Process transmitted to Sheriff, who either fixes hearing, orders debate, or, with concurrence, decides at once.

IV.

The Act of 1876 further provides for—

1. Procedure in multiplepoindings and cessios.
2. Abolition of commissary courts.
3. Amendment of law as to confirmation.
4. Jurisdiction of Sheriffs.
5. Wakening of actions.

Extracts can be got fourteen days after date of interlocutor, unless same appealed.

V. EXTENSION OF JUDGMENTS.

Judgments of Sheriff Court can be executed in England or Ireland under—

Inferior Courts Judgment Extension Act, 1882.

Act of Sederunt thereanent, 1883.

Procedure same as in Court of Session.

VI. DEBTS RECOVERY ACT.

For actions as to rents, men's ordinaries or provisions, servants' fees, merchants' accounts, etc.

If above £12 and under £50.

I. **Procedure** very nearly same as in Small Debt cases below.

II. **Appeals**—

1. Only allowed against point of law, or facts, when notes of evidence taken.
2. Must be within eight days (or sixteen days, if in Orkney and Shetland).

3. Transmitted to Sheriff, who makes order for new proof or additional evidence, or gives judgment.
4. If over £25, further appeal competent to Court of Session.

   Procedure as in ordinary cases.
5. If under £25, further appeal competent to Circuit Court.

   Procedure as in Small Debt cases.

VII. SMALL DEBT ACT.

For petitory actions, furthcomings, multiplepoindings, and sequestrations for rent.

If £12 or under.

I. Procedure.

1. Summons issued.
2. Citation on six days' *inducice*.
3. Called, and at this or adjourned diet evidence led, parties heard, and judgment given.
4. Extract decree written on summons, and charge on ten days' *inducice*.
5. Execution by poinding and sale.

II. Appeals.

1. Are not allowed on merits or law, but only on—
   (1.) Corruption or malice.
   (2.) Deviation from statutes.
   (3.) Incompetency or want of jurisdiction.
2. Within ten days minute of appeal lodged, and copy served on respondent and Sheriff (*inducice* fifteen days).
3. Proceedings marked by Sheriff.
4. Bond of caution lodged.
5. Remitted to Circuit Court, and parties heard, and case decided there.

LATIN MAXIMS.

A Selection of Latin Maxims taken from Erskine's Principles and Bell's Principles, excluding most of those in daily use and well known.

A non habente potestatem.	From a person not possessing the power of doing what he has done.
Actio quanti minoris.	Action to recover part of price, when subject deficient.
Actio tutelæ contraria.	Action by tutors or curators to get a discharge.
Actio tutelæ directa.	Action against tutors or curators to have accounts produced.
Actor sequitur forum rei.	A pursuer follows the Court of the defender.
Ad omissa vel male appretiata.	In regard to things omitted or not fully valued.
Aditio hæreditatis in mobilibus.	Succession to heritage in moveables.
Altius non tollendi et non officiendi luminibus vel prospectui.	Of not building higher and obstructing light or prospect.
Alvei mutatio.	The changing of the bed of a river.
Assignatus utitur jure auctoris.	An assignee enjoys the same right as his author.
Auctores in rem suam.	Tutors and curators cannot do any act for their own advantage contrary to trust.
Avulsio.	Property separated by overflow of water, and joined to another proprietor's ground.
Beneficium cedendarum actionem.	The right of action assigned on payment of a debt.
Beneficium divisionis.	The benefit of division.

Cæteris paribus.	In similar circumstances.
Causa data causa non secuta.	The consideration having failed.
Caveat emptor.	Let the buyer beware! Purchaser must inspect goods before buying.
Chirographum apud debitorem repertum præsumitur solutum.	Written obligation found in debtor's hands presumed discharge.
Cognitionis causa tantum.	In order to ascertain or constitute.
Concursus debiti et crediti.	A concurrence of debt and credit.
Condictio indebiti.	An action for repetition of what was paid when not due.
Consensus in idem placitum et conventio.	Consent and bargain agreed upon touching the same thing.
Consensus non concubitus facit matrimonium.	Consent, not intercourse, constitutes marriage.
Contra fidem tabularum nuptialum.	Against the good faith of the marriage contract.
Contra hæreditatem jacentem.	Against the heritage to which heir has not made up title.
Corrii debendi.	Joint-obligants for a debt.
Cum decemis inclusis et nunquam antea separatis.	With tithes included and never before separated.
Cum omni obventione et causa.	With every profit or advantage.
De judicio sisti et judicatum solvi.	To be forthcoming to answer to a suit, and that decree will be implemented.
Debitum in presenti solvendum in futuro.	A debt now due, but not payable till a future time.
Decennalis et triennalis possessor non tenetur docere de titulo.	A possessor for thirteen years is not bound to instruct his title.
Del credere.	Guaranteeing solvency of buyer, in case of agent selling goods.
Dies cedit sed non venit.	The obligation exists, but is not yet prestable.
Dies inceptus pro completo habetur.	A day commenced is held as completed.

Dies incertus pro conditione habetur.	An uncertain day is regarded as a condition.
Dies nec cedit nec venit.	In annuities, which depend on lives, money is not due till day of payment.
Dissimulatione tollitur injuria.	An injury is extinguished by forgiveness of injured person.
Duorum pluriumve in idem placitum consensus et conventio pactum est.	A contract is the covenant of two or more persons agreed concerning the same thing.
Eadem persona cum defuncto.	Heir is held to be same person as ancestor.
Ex capite minorennitatis et læsionis.	On the ground of minority and lesion.
Ex vi aut metu.	Through force or fear.
Ignorantia juris neminem excusat.	Ignorance of the law excuses no one for breaking it.
Iis quæ sunt meræ facultatis non præscribitur.	In things which consist of a mere power to act, there is never prescription.
In æmulationem vicini.	To the prejudice of his neighbour.
In liege poustie.	In a state of health to dispose *mortis causa.*
In re communi melior est conditio prohibentis.	In common property, the condition of the one prohibiting is the better.
Jure sanguinis nunquam præscribitur.	Prescription never takes place in right of blood.
Jus ad rem specificam.	The right to a subject.
Jus exigendi.	The right of enforcing fulfilment.
Jus in re.	The right in a thing,—a real right.
Jus pascendi pecoris.	The right of pasturing cattle.
Jus quæsitum.	A vested right.
Jus retinendi et insistendi.	A right of retention and of suing.
Jus sibi dicere.	To take the law into his own hands.
Legatum quantitatis.	A general legacy.

Lex rhodia de jactu.	The law as to goods thrown overboard. General average.
Loco facti imprestabilis subit damnum et interesse.	Damages come in place of a fact not performed, or which cannot be performed.
Melior est conditio possidentis vel defendentis.	The condition of a possessor, or a defender, is better.
Mercium jactus levandæ navis causa.	Goods thrown overboard to lighten the ship.
Messis sementem sequitur.	Harvest follows seed-time. A *bona fide* possessor entitled to crop he has sown.
Minor non tenetur placitare super hæreditate.	Minor is not bound to defend his title against claimant till he be major.
Modus transferendi dominii.	The form of transference of property.
Nautæ caupones stabularii, etc.	Sailors, innkeepers, stablers, etc., liable for goods brought into ship, inn, or stable. Roman edict, which is modified now.
Ne conjuges mutuo amore se spolient.	Lest spouses, through mutual love, should impoverish one another.
Negotiorum gestor.	A person who manages another person's affairs in his absence without authority.
Nemo tenetur edere instrumenta contra se.	Nobody is bound to produce writings against himself.
Nemo tenetur jurare in suam turpitudinem.	Nobody is bound to give oath in evidence of his own guilt.
Nomine feudi firmæ.	In name of a feu-duty.
Non enim creditur referenti nisi constet de relato.	People do not trust to the relating of a matter, unless it appear evident from the relation.
Non valens agere.	Not able to act.
Omnia rite et solemnitur acta esse.	All things are presumed to have been done, duly and in usual manner.

Ope exceptionis.	By force of exception.
Pactum de quota litis.	An agreement for a share of the subject of a lawsuit.
Pactum legis commissoriæ in pignoribus.	An agreement as to pledges. If pledge not redeemed in time, it belongs to creditor.
Pater est quem nuptiæ demonstrant.	He is the father whom the marriage points out to be.
Pendente lite nihil innovandum.	During a depending process there can be no innovation.
Periculo petentium.	At the risk of applicants.
Periculum rei venditæ nondum traditæ est emptoris.	Risk of thing sold, but not delivered, lies with the buyer.
Pignus prætorium.	A legal pledge.
Plus enim valet quod agitur quam quod similate concipitur.	That which is done is more availing than that which is covertly pretended.
Plus quam tolerabile.	More than can be suffered.
Præpositus negotiis domesticis.	Entrusted with domestic affairs (*i.e.* a married woman).
Præpositus negotiis societatis.	Entrusted with the affairs of a partnership.
Pro rata itineris.	According to the length of the journey.
Probatio extremis præsumuntur media.	The extremes being proved, things falling between are presumed.
Propriis manibus.	With his own hands.
Propter rem ipsam non habitam.	On account of not having had the thing itself in possession.
Prout de jure.	According to law.
Quæ servando servari nequeunt.	Which cannot be preserved by being taken care of.
Quæstio voluntatis.	A question of intention.
Quantum meruit.	As much as he has earned.
Qui consulto dat quod non debetat præsumitur donare.	One who gives to another what he does not owe, is presumed to give it as a donation.
Quilibet titulus excusat a spolio.	Any sort of a title excuses from a spuilzie.

Quæ [illegible] debet locupletari jactura alterius

Quod approbo non reprobo.	What I approbate, I do not reprobate.
Quod nullius est fit domini regis.	That which belongs to nobody becomes the king's property.
Quod pure debetur præsenti die debetur.	That which is due unconditionally is due now.
Quod statim liquidare potest pro jam liquido habetur.	A debt which can be instantly liquidated is held liquid, and compensates a liquid debt.
Quodammodo jurisdictionis voluntariæ.	After the manner of voluntary jurisdiction.
Quomodo desiit possidere.	How he ceased to possess.
Rei alienæ scienter legatæ.	Of property belonging to another knowingly bequeathed.
Rei depositæ proprietas apud deponentem manet sed et possessio.	The right of property in a thing deposited remains with the depositor, and also the possession.
Rei suæ providus.	Careful of his own property.
Res inter alios acta aliis non nocet.	No person is allowed to be hurt by a transaction among others to which he is not a party.
Res meræ facultatis.	A mere power to do.
Res perit domino.	A thing perishes to its owner.
Res sua nemini servit.	Nobody has a servitude over his own property.
Salvam fecit totius pignoris causam.	He furnished the means of saving the whole pledge.
Salvo jure cujus libet.	Saving and reserving every person's right according to law.
Semiplena probatio.	A half proof. A proof which induces strong belief, but does not amount to legal evidence.
Si testator sine liberis decesserit.	If the testator shall have died without children.
Sponsiones ludicræ.	Obligations undertaken in jest. Wagers, etc.

Successor titulo lucrativo post contractum debitum.	A successor by a lucrative title, after debt has been contracted. If heirs accept by gratuitous deed estate to which they would have succeeded, they are liable.
Super aliquam partem fundi.	Upon any part of the land.
Tanquam bonus vir.	As an honest man.
Tantum præscriptum quantum possessum.	A prescriptive right can only be acquired in so far as there has been possession.
Titulus transferendi dominii.	The intention of conveying property.
Traditionibus non nudis pactis transferentur rerum dominia.	The property of things is transferred by tradition and possession, not by agreements.
Tutor datur personæ, curator rei.	A tutor takes charge of the person; a curator of the property.
Ultra vires compromissi.	Beyond the limits of the compromise or reference.
Unumquodque eodem modo solvitur quo colligatur.	A written deed is discharged in the same manner.
Vergens ad inopiam.	Verging towards insolvency.
Vinculum personarum ab eodem stipite descendentium.	The bond uniting persons descended from the same stock.

LAW AGENTS ACT, 1873.

EXAMINATIONS.

The stated quarterly examinations which are held in Edinburgh commence yearly on the fourth Tuesday in January, the first Tuesday in May, the third Tuesday in July, and the third Tuesday in October.

As candidates can only be examined in law after presenting a petition to the Court, those intending to undergo that examination where the petition has not been previously prepared, should put themselves in communication with the secretary at least *twenty-eight* days before the date of the examination. Candidates for examination in law, whose petitions have been previously prepared, require to give notice to the secretary *fourteen* days before the examination.

The fees for the different examinations require to be paid to the secretary at the time the candidates give notice.

SUBJECTS OF THE EXAMINATION.

EXAMINATION IN LAW.

The Law of Scotland, Civil and Criminal, Erskine's Institutes, Bell's Principles, Hume's Commentaries, Conveyancing.

Forms of process, civil and criminal.

Candidates will keep in view that besides a knowledge of principles, a knowledge of forms of process, both in the Supreme and Sheriff Courts, is essential.

Applicants who hold the degree of LL.B. or of B.L. of any Scotch university only require to undergo examination on forms of process, civil and criminal.

To enable the secretary to prepare the applicant's petition, he requires to lodge with him at the time of making application certain of the documents noted below, according to the qualifications founded on :—

Extract of indenture, duly discharged.

Assignation thereof, or agreement, duly discharged.

Certificate of apprenticeship; or of clerkship, where service commenced before 5th August 1873.

Certificate of having passed the apprentices' entrance examination.

Certificate of having passed the examination in general knowledge.

Diploma of the degree in Arts or in Law.

Certificates of attendance at the requisite classes in Arts.

Certificates of attendance at the Scots Law and Conveyancing classes, where these classes have been attended.

Certificate of birth.

Fees payable to the secretary with the application for a first examination, £5, 17s. 6d. For subsequent examinations, £2, 2s each.

LAW EXAMINATION QUESTIONS.

I. SCOTS LAW.

1. What is the rule as to the liability of obligants under a joint obligation, and what exceptions are there to this rule?

2. What are general average and particular average, and on whom does the loss fall in both cases?

3. What is the form of a bill of exchange, and of a general and qualified acceptance thereof?

4. What are the various kinds of prescription, and is there any prescription of crimes?

5. What liability does a person incur who serves as heir in general to his ancestor?

6. Translate and illustrate by example any two of the following maxims: (*a*) In pari delicto potior est conditio defendentis; (*b*) Periculum rei venditæ non dum traditæ est emptoris; (*c*) Assignatus utitur jure auctoris.

7. What is meant by a creditor who sues a cautioner for a debt giving time to the principal debtor, and what is the effect on the position of the cautioner?

8. What change in the law of prescription has been made by the Conveyancing Act, and what peculiarity applies under the Act to servitudes?

9. What leases require writing to their constitution, and what is the effect of *rei interventus* on a verbal lease properly requiring writing?

10. What is the *jus relictæ*, and over what property does it extend?

11. Does the right pass to representatives if not claimed in the lifetime of the party primarily entitled?

12. To what extent has the rule of representation, apart from any question of collation, been introduced into moveable succession by the Intestate Succession Act, 1855? State whether or not the provision applies to *legitim*.

13. What change, and in a question with whom, was made on the seller's right of retention, by § 2 and 3 of the Mercantile Law Amendment Act, 1856 ?

14. Explain the nature of a *del credere* agency; and state grounds for holding that it does, or does not, fall under the statutory rule requiring guarantees to be in writing.

15. What title is necessary for salmon fishing, and what difference exists in regard to trout fishing ?

16. Under what statutory conditions is a heritable security for future advances of money effectual to the creditor ?

17. Under what conditions is a debtor entitled to apply for decree of *cessio bonorum*, and what is the effect of the decree on the debtor and the rights of the creditors ?

18. Under what conditions are the father and mother entitled to succeed to the moveable estate of an intestate, or to a share of it ? Mention the share taken in each case.

19. What are the *annus deliberandi*, *quadriennium utile*, and decennial prescription ?

20. Who are heirs, heirs at law, heirs of provision, heirs male, heirs female, bairns or children of the marriage, when these occur in a destination of heritable property ?

21. What is the meaning of the rule, *messis sementem sequitur ?* Give an illustration of its application ?

22. (*a*) What are the legal terms of payment of rent of arable land ? (*b*) In case of the death of the proprietor of a fee simple estate on 26th May, the rents of whose farms are payable conventionally at Martinmas and Whitsunday after reaping, what is the executor's right to the rents of the estate ?

23. What is (*a*) dead freight, (*b*) general average, (*c*) the memorandum attached to policies of marine insurance ?

24. What is the doctrine of approbate and reprobate ? Give an illustration of its application.

25. (*a*) What is the effect of the Statute 1621, c. 18, and what has the pursuer of an action under it to prove ? (*b*) What is the effect of the Statute 1696, c. 5, and what has the pursuer of an action under it to prove ?

26. (*a*) Can a company, sued by one of its creditors, plead compensation in a private debt due by the creditor to one of its partners without the partner's consent ? (*b*) Can a company's creditor, sued by a partner for a private debt, meet the claim by

setting off the debt due by the company to the creditor? Give the reasons for your answers.

27. A cargo is insured against perils of the sea, and is damaged by sea water from a leak. (*a*) How is the risk affected if the cargo is included in the memorandum of the policy, and if not? (*b*) and how is the risk affected if the leak is caused by stranding?

28. In an action of damages for seduction, and in an action of declarator of marriage *subsequente copula*, is there any, and if so, what difference in the mode of proof of the promise?

29. Is a husband liable for the aliment of his wife's bastard child, born before marriage? Has he any relief against the father of the child? What is the liability of the husband for the debts of the wife, contracted before marriage?

30. What are the requisites of an agricultural lease? What is necessary to secure the tenant against singular successors?

31. Is a trustee entitled to purchase part of the trust estate? Is he entitled to charge the trust estate for remuneration for services performed therefor?

32. What is *condictio indebiti*, and its effects?

33. Explain *actio quanti minoris*, *quasi delict*, and *negotiorum gestio*.

34. What company, whether banking or not, formed subsequent to 1862, may, and must, respectively be registered under the Companies Act of that year? And what is meant by a company limited by guarantee?

35. In what classes of contracts or debts do the septennial and the triennial prescription apply? Is minority an exception; and is a reference to oath competent as an answer to either of them, and if so, to which?

36. What is the nature of the landlord's hypothec in urban subjects; over what does it extend, and for what period is it effectual?

37. State generally the law as to donations *inter virum et uxorem*, and also the effect of divorce on such donations.

38. Explain the effect on a contract of—(*a*) fraud, (*b*) illegality in the contract. In regard to fraud, state whether the effect is the same, or different, in the two cases. (*c*) Where the fraud is devised by one of the contracting parties against the other. (*d*) Where it is devised by both against a third party, *e.g.* where an

insolvent debtor, in making a composition arrangement, agrees secretly to favour a particular creditor.

39. What are the conditions of the right of stoppage *in transitu?* And what change in the law, as to the effect of the transfer of documents of title to goods in defeating the right, was made by the Factors Act, 1877?

40. Explain and give an illustration of the maxim, *assignatus utitur jure auctoris.* Does it apply, and if so, under what conditions, to the position of an indorsee of a bill?

41. A bill, falling due in Edinburgh to-day, is dishonoured by non-payment. State the steps to be taken by an indorsee for enforcing it by summary diligence, and for preserving recourse against the drawer, who resides in Aberdeen; also, within what time the respective steps must be taken.

42. What is meant by tacit relocation? To what cases and in what circumstances does it apply, and what is its effect?

43. Explain the object and nature of the diligence of inhibition; and state whether, and if so, under what circumstances, advances made by a bank under a cash credit bond may be affected by it.

44. Mention the leading classes of cases in which parole evidence is incompetent. In what circumstances, if any, is such evidence—(*a*) admitted, or (*b*) excluded in a proof of a promise of marriage or of the payment of money?

45. How may a cautionary obligation be proved obligatory on a cautioner? What is the authority for your answer?

46. What is right of relief? Can action be taken before the relative obligation is implemented?

47. What are bonds of bottomry and *respondentia?* What are the creditor's rights, and what is the order of preference of creditors in the several bonds?

48. Give four divisions of the way in which obligations are extinguished. Give in Latin the general rule as to evidence of payment.

49. Are all parish ministers entitled to a manse, and is there any limit to cost? What is the rule?

50. What is the doctrine of stoppage *in transitu?* What is the effect when a bill of lading is granted for the goods? How is the question of delivery affected when the sale is for cash, and the cash not paid?

51. What is *Lex Rhodia de jactu ?*

52. What is the effect upon a copartnery of—(*a*) death, (*b*) insanity, (*c*) insolvency, (*d*) sequestration of a partner ?

53. Define *locus pœnitentiæ, rei interventus,* and homologation. Give an example of the grounds on which a contract is void when inconsistent with public policy.

54. What is a charter-party ? Who are the parties to it, and what four particulars does it define ?

55. State the doctrine as to the restitution of stolen goods. Are there any exceptions ?

56. How is a debtor made bankrupt before and after 1880 ? When it is not wished to sequestrate debtor's goods, and he refuses to grant a trust deed, what proceedings can creditor take to have them realized by trustee ?

57. At what stage, and on whom, is the risk of a sale of goods; and give the Latin maxim for the principle ? State any exceptions to the rule.

58. What are the objects and effect of a bill of lading, and how is it made out ? What is the rule as to the use of one of the set ?

59. Explain the nature of pledge, lien, and hypothec, and state if title deeds can be made subject to any or all of them.

60. What are the rules for determining the heritable or moveable nature of fixtures ? Do tenant's fixtures go to his heir or executor on his death, during currency of lease ?

61. A. has an illegitimate son by B. He marries C. and has a family, including a son. On C.'s death A. marries B. What is the effect of this second marriage on the son of A. and B. ?

62. In the case of succession of heirs-portioners, what privileges and advantages has the eldest daughter ?

63. What are the recognised classes of general retention by the law of Scotland ?

64. What is the difference between unilateral, mutual, and gratuitous obligations, and how is each affected by delivery of the obligation ?

65. What are the rules as to giving effect to contingent and conditional legacies ?

66. What are lay days and demurrage; and, with reference to the former, what meaning has been attached to the words—(*a*) working day, (*b*) running days, and (*c*) days ?

67. What is the difference between damage for breach of contract and damage for delict?

68. Are contracts entered into on a Sunday, bills dated on a Sunday, and diligence executed on a Sunday, null?

69. In what circumstances does the property of goods sold not pass to the purchaser by actual delivery: (*a*) goods sold are shipped by seller, and, on the vessel given by the shipmaster, they are stated to be shipped by the purchaser; (*b*) goods sold are shipped by the seller, not to be conveyed to the purchaser, but to be taken elsewhere on a commercial speculation; (*c*) goods sold are delivered into a ship belonging to the purchaser, and the bill of lading is taken to the seller and his assignees. Can the seller in each case exercise the right of stoppage *in transitu* on the vessels reaching their destinations before delivery of the goods is given?

70. A. purchased from B. the moveable machinery in a mill, and let the machinery on hire to B. On B.'s bankruptcy, can the creditors claim the machinery? C. lends to D. £2000 on the security of a mill and the machinery heritable and moveable therein. He takes from D. an *ex facie* absolute conveyance to the mill and machinery, and grants to D. a lease of them. On D.'s bankruptcy, can his creditors claim the machinery?

71. What is a qualified acceptance of a bill, and in what different ways can an acceptance be qualified? What effect has the qualified acceptance of a bill on the parties to it?

72. What is the *annus deliberandi*, and how has it been restricted?

73. How may marriage be proved in Scotland?

74. Define a contract;—how may it be proved?

75. What security have ship carpenters for work executed by them?

76. What is an assignation? Is the rule *assignatus utitur jure auctoris* of universal application?

77. Distinguish between bankruptcy and insolvency. Mention some of the effects of sequestration.

78. Give an account of marriage by *verba de futuro subsequente copula*, and state how it can be established in Scotland.

79. In what order are heirs, executors, and beneficiaries liable for the obligations of the ancestor?

80. When is a master liable to a servant for injuries sustained by the latter when in his employment?

81. When a contract of sale has been entered into, and before the price has been paid, or the goods delivered, the purchaser becomes bankrupt, what are the rights of the seller, of the trustee, of the purchaser, and of sub-vendees before the bankruptcy respectively?

82. In marine insurance, what amounts to constructive total loss? Can the insured insist upon abandonment? How is abandonment effected?

83. How may the constitution of—(*a*) a lease of land, and (*b*) a predial servitude be proved?

84. In what various ways may a bill of exchange be preserved from prescription?

85. What right has a wife to her own earnings—(1) at common law, (2) under a protection order, and (3) under recent statutes?

86. What are (1) *collatio bonorum inter liberos*, and (2) collation of heritage? What in each case is collated, and by whom?

87. What rights and obligations arise out of a contract made with an agent for an undisclosed principal?

88. In what way may servitudes be constituted and extinguished?

89. May one, whose signature to a bill of exchange is forged, become liable for the sum in the bill?

90. What are a legacy, a donation *inter vivos*, and a donation *mortis causa?* What evidence is required to prove each?

91. What is compensation, and how does it operate—(1) when the same person is both creditor and debtor of a bankrupt firm? (2) when a shareholder, from whom calls are demanded, is a creditor of a limited company, and an order for winding-up has been pronounced after the date of the calls?

II. CONVEYANCING.

1. What is meant by a "bounding charter"? How is it constituted; and what are its effects as regards the acquisition by prescriptive possession in virtue of it, of property, or rights, beyond the limits of the feu?

2. What are the rules that determine the question and period of vesting of bequests or provisions, in liferent or fee, in favour of individuals or classes, and with or without survivorship clauses?

3. A. on 6th January 1860 adjudged the estate belonging to B. for a debt of £6000, and was infeft. B. granted a bond and disposition in security to C. on estate for £6000, which was recorded on 5th April 1860. On 20th October 1860, D. adjudged the estate for a debt of £6000, and on 5th February 1861, E. adjudged the estate for a debt of £6000. The estate was sold for £8000. How would A., C., D., and E. be ranked on the price, and what would be the result of the ranking—(*a*) in the circumstances above stated; and (*b*) in the same circumstances, with this difference, that on 10th December 1860, C. had also adjudged? Explain the reason.

4. A. died infeft, and in 1864 B. obtained a decree of special service as heir in the lands, and disponed them to C., who recorded the disposition with warrant of registration. B. died in 1878. C. has now sold the lands, and his title is objected to by the purchaser. Is it liable to any, and if so, what objection, and how can the error be corrected?

5. Explain the terms—institute, conditional institute, constructive conditional institute, and substitute, giving an example in illustration of each.

6. A., a Crown vassal infeft and confirmed, disponed to B. *a me vel de me*, with procuratory and precept. B. having taken infeftment, died unconfirmed and intestate. His heir C., to save the expense of a Crown entry, obtained in 1850 a precept of *clare constat* from A., on which he took infeftment. State how on the death of C., intestate, in 1860, his heir D. might have completed a title, and detail the steps which would have been necessary in order to vest him in the full right that was in A.

7. A. having disponed *a me vel de me* to "B. and his heirs," B. took infeftment in these terms, but did not confirm. On B.'s death, intestate, in 1860, C., his heir, having expede general service to him, obtained a charter of resignation, on which he took infeftment. C. died in 1870, leaving a general settlement in favour of Y., his second son. The estate is claimed by X., his eldest son, and by Y. To whom does it belong? Explain position of title, and complete a title of successful competitor.

8. On what narrative, and in whose favour, should a bond and disposition in security be framed where money advanced by—(*a*) judicial factor, (*b*) tutor nominate or dative, (*c*) *curator bonis* for a lunatic, (*d*) testamentary trustees?

9. A. infeft, disponed by contract of marriage to himself in liferent, and the heirs of the marriage in fee. On A.'s death, state in detail how a title is made up by A.'s eldest son B. Supposing—(*a*) A. infeft in liferent alone, (*b*) infeft in full, (*c*) what would have been the difference had A.'s right been in liferent allenarly?

10. Describe the mode or modes in which a successor to a bond and disposition in security, taken to a creditor and "his heirs and assignees," and recorded, would make up his title, if creditor died testate or intestate prior to and after 1868.

11. A. infeft, disponed by contract of marriage to B. and C., spouses, in conjunct fee, and their heirs, and infeftment was taken by B. and C. in conjunct fee. B. and C. both died, the former leaving a general disposition and settlement in favour of X., and the latter in favour of Y. X. and Y. expede notarial instruments in half each *pro indiviso*. How far is the title valid? Give the reason.

12. What are the alterations and modifications of 1874 Act regarding renewal of investiture and casualties?

13. What are the alterations and modifications of 1874 Act regarding prescription?

14. What is the law in regard to the necessity or non-necessity of appointing an arbiter *by name* in a separate submission, or in obligation to submit in another contract?

15. A. died infeft in lands situated in different counties and burghs. Heir's title was made up by special service, and completed, so as to give a separate title to each parcel of land. Give the different ways possible and the preferable mode.

16. A. succeeded to the lands of X. under a destination in a marriage contract, and to the lands of Y. under a deed of strict entail, but being the heir of investiture made up titles in that character to both properties, disregarding the contract and entail. After possessing for more than forty years under the title, the rights under the marriage contract and the entail called to the possession persons different from the heirs of investiture, and a

competition arose between them. Which of them would succeed? State the reason.

17. What is the character of a feudal right vested in a trustee under a disposition of lands for creditors, and under a disposition *mortis causa*? Give examples.

18. A., possessed of lands, and bonds and dispositions in security, by *mortis causa* deed assigned his whole heritable property and estate to B. What was the effect of the deed, supposing A. died—(*a*) in 1860, (*b*) in 1880?

19. By *mortis causa* deed of settlement, which remained undelivered at granter's death, lands are disponed to A. and the heirs of his body, whom failing B. and the heirs of his body, whom failing C. and the heirs of his body. What is the effect of the destination, and how is the title made up, where A. and B. predecease without issue and C. survives; or A. predeceased and B. survived, but died without issue, and without making up title survived by C.?

20. A. feued to B. B. infeft disponed *a me vel de me* to C. C. infeft, but unconfirmed, died intestate. State how you make up heir's title in 1846, 1866, and 1876, giving alternate modes.

21. A. disponed by contract of marriage to himself and B. his wife, in conjunct fee and liferent, and to the heirs of his marriage, whom failing to C., whom failing to D. and his heirs in fee. No infeftment followed. On A.'s death, without issue, and predeceased by B. and C., how would you complete D.'s title? And supposing D. died in 1879 without feudalizing and intestate, how would you complete his heir C.'s title?

22. For what periods, and in what registers, could the purchaser of subjects held feu, apart from stipulation, insist upon a search of incumbrances in 1870; and what change, if any, would there be in such search now?

23. To what extent, prior to the Conveyancing Act, 1874, did—(*a*) an infefeftment *a me*, not followed by confirmation, (*b*) a similar infeftment followed by confirmation, (*c*) an infeftment *a me vel de me* not followed by confirmation, and (*d*) a similar infeftment followed by confirmation, respectively vest the disponee?

24. A. feued to B. B. infeft, disponed to C. C. infeft, disponed to D. D. infeft, disponed to E. E. uninfeft, disponed to F.

Each disposition contained alternative holding, procuratory, and precept. Detail—(*a*) how F. would have completed his title—(1) by confirmation, (2) by resignation in 1846, specifying in each case the deed or deeds which required to be confirmed, or on which resignation would be made; and (*b*) state what difference, if any, there would have been in 1866.

25. A., B., C., and D. were brothers. B. died leaving an only child K. M. by his settlement directed his trustees to pay to K. or his heirs a pecuniary legacy. K., who was predeceased by A., C., and D., himself predeceased M. without issue, and survived by E. and F., children of A., by G., a child of C., and by H., a grandchild of D. Who are as heirs entitled to the legacy, and in what proportions? Explain the principle.

26. A. by his settlement directed his trustees, in the event of the marriage of B., to pay to C. a certain legacy, and by a codicil directed them, in the event of the marriage or death of B., to pay to C. a further legacy. C. survived A., and B. married, but after the death of C. Did the legacies vest? Explain the principle.

27. A., who is infeft, dispones to B. and C. and the survivors of them in liferent, for liferent use only, and to the heir male, whom failing, the heir female of the marriage between B. and C. in fee. In whom is the fee actual or fiduciary? When does the actual fee vest? And how would you complete the title of X., the only daughter of the marriage, there being no sons, according as—(*a*) B. and C. had been infeft in the liferent alone, or (*b*) B. and C. had been infeft in the full terms of the destination?

28. A. infeft, by a *mortis causa* undelivered deed, dispones "failing heirs of his body" to B., whom failing to C., and the heirs of their respective bodies. If A. died in 1870, who succeeded, and in what character would they make up title?

(1.) If A. died leaving a son D.

(2.) If A. died without issue, predeceased by B. unmarried.

(3.) If A. died without issue, predeceased by B., who left a son X.

(4.) If A. died without issue, survived by B., who dies uninfeft, leaving a son Y.

29. A. feued to B. for feu-duty of £5. B. infeft, disponed *a me* to C. C. died uninfeft, and was succeeded by D. By what

steps could D. have obtained a title in 1870, supposing A. dead and his son X. refused to make up title or give any assistance? What would be the difference now? Give the reasons.

30. A., who had married without contract, died intestate, leaving lands, heritable securities for £10,000, stock in companies, and money in bank for £15,000, and leaving a widow B., two sons C. and D., a daughter E., and G. and A., children of a deceased younger son F. How would succession be divided (stating results where possible in figures), supposing A. died in —(*a*) 1840, (*b*) 1860, (*c*) 1870?

31. A. died intestate and infeft in burgage subjects. Detail the steps by which his heir could have made up a title to them in 1840, 1850, and 1870, giving the alternative methods when these are or were competent.

32. A. infeft on a precept from the Crown, disponed *a me vel de me* to B. B. infeft, but unconfirmed, died intestate, and was succeeded by C. State how C. would have completed a title in 1845, and now, and difference, if any, if A. had held of a subject.

33. What is the effect of the stipulation that a purchaser take the title as it stands? Give illustrations.

34. Mention the several purposes for which a deed may be registered. Specify the ordinary registers, appropriate in 1865 and 1875, for the several purposes, and state what is required to authorize registration in the respective registers.

35. In framing a cautionary obligation, what must be attended to in order to secure to the cautioner the benefit of the septennial limitation, and what class of cautioners have not the benefit of it?

36. What, prior to the Entail Amendment Act of 1848, was required in order to constitute a strict entail; and to what extent, as regards the form of the deed, were the previous requirements altered by that Act and by the Titles Acts of 1858 and 1860?

37. A. dies in right of a recorded heritable security, from which executors are not excluded. In what ways may a title to it be completed, when he has left a deed—(*a*) naming executors, (*b*) bequeathing his moveable estate to a legatee?

38. A. disponed to B. in liferent, and his children in fee, and infeftment is then given to B. in liferent. B. disponed to C., and

C. is infeft. C. sells to D., who takes objection to C.'s title as incomplete. Wherein does the defect lie, and how may it be remedied?

39. X. disponed certain lands to his daughter A. in liferent, for her liferent use only, and to her children in fee, and sasine followed in these terms. A. died, survived by her husband B. and four children, all of whom died in infancy, and predeceased their father B., who died in 1870, leaving a brother C. The property was claimed by C. and by the heir at law of X. Who was entitled to it, and how and in what character would the successor make up his title?

40. A debtor in a heritable security for £2000 in favour of B. paid up £1000, but got no discharge of the security. B. afterwards, in consideration of £2000 paid by C., assigned to him the debt and security, and C. recorded the assignation. What is the effect of the assignation? State the grounds of your answer.

41. What is the effect of intimation of an assignation of a personal right? How far does the private knowledge of the debtor of such assignation supersede the necessity of intimation, and how is intimation made, under the forms provided by the Transmission of Moveables Act of 1862?

42. State briefly the alterations in the form of the ordinary disposition of heritage held feu by the Transference of Lands Act, 1847; the Titles Act, 1858; and the Conveyancing Act, 1874.

43. A purchaser of heritage objected to a prescriptive title which was tendered—(1) That the warrant on which the first sasine proceeded was vitiated *in essentialibus;* (2) That the sasine itself contained an unauthenticated interlineation *in essentialibus;* and (3) That one of the other sasines of the progress was recorded after the death of the party in whose favour it was expede. Supposing the objections are true in fact, how far were they respectively valid? Give reasons.

44. Explain the object of what is called sopiting titles, and how is it done? Give a practical example in illustration of your answer.

45. Lands are disponed to A. in liferent, for his liferent use allenarly, and to the heirs male of his body in fee. A., and B. his eldest son, have sold and disponed the lands by joint disposition. Is the disposition good or not? Give reason.

46. A. in 1860 granted to B., who is still alive, a feu charter containing the following reddendo:—"Paying therefor to me, my heirs and successors, the sum of £50 yearly in name of feu-duty, and that at two terms in the year, Whitsunday and Martinmas, by equal portions." To what casualties, if any, is A. entitled under the foregoing clause, and on what terms is B. entitled to redeem them? Give reason.

47. A Crown vassal, publicly infeft, died intestate. State briefly the alternative modes by which his heir could have completed his title in 1870, and ~~how~~?

48. How far was it necessary, prior to 1874, to make use of the word "dispone," or words of *de presenti* conveyance, in testamentary or other deeds dealing with heritage; and what is the law now?

49. Where, in a contract of marriage, heritable and moveable property is destined to the spouses in conjunct fee and liferent, what, in cases of doubt, are the general rules for determining in whom is the fee?

50. Under what circumstances has a master of a ship, who is not the owner, power by statute, or at common law, to grant securities on his ship? How are such securities perfected, and how is their preference regulated?

51. In A.'s marriage contract A.'s father settled his estate, in which he was infeft, on A. and B. spouses, in conjunct liferent, for their liferent use allenarly, and the heirs of the marriage in fee. Infeftment was passed thereon in favour of A. and B. for their liferent use allenarly. On A.'s sequestration, how far were the respective estates subject to his debts? State the reason.

52. Explain the meaning of intrinsic and extrinsic objections, and give an example of each in the case of—(1) a deed, (2) an instrument, and (3) a decree. State the effect of prescription on such objections.

53. Mention the different methods by which it is competent, by marriage contract, to give the children a proper *jus crediti* for unsecured provisions, entitling them to rank equally with their father's creditors in the event of his sequestration in his lifetime.

54. Did, or does, the sequestration of the debtor in a heritable security affect the rights of the creditor therein as regards the moveables belonging to the debtor on the lands or the rents; and

if so, in what respect? State the law as in 1830, 1850, and now.

55. What are the rules, under the Act of 1874, as to casualties which may be stipulated for in feus granted after the passing of the Act?

56. Where lands are sold by a prior heritable creditor under a power of sale, and no surplus of the price remains after paying the debt, interest, and expenses due to such creditor, how may the lands be disencumbered of all other securities and diligence affecting them?

57. How far, prior to the Infeftment Act of 1845, was it necessary—(1) that the precept of sasine, or (2) that the instrument of sasine, should specify the symbols to be used, or that were used in giving infeftment?

58. Trace the changes made in the completion of a disponee's title by sasine or its equivalents by the Infeftment Act of 1845, the Titles to Land Act, 1858, and Consolidation Act, 1868.

59. What constitutes a prescriptive title, according as the progress starts with that of an heir, a disponee, or an adjudging creditor; and what effect, as regards prescription, has interruption of possession or minority upon such a title?

60. What was necessary before 1874, and what is necessary now, to relieve a vassal, who has sold the land, of his liability to the superior for the feu-duty?

61. A. purchased No. 1 Elgin Street from B. for £1000. Give the form of a valid conveyance from B. to A.

62. How is a real burden transmitted?

63. What is the doctrine of accretion, and on what principle does it depend?

64. A., by *mortis causa* deed, disponed heritable property to his nephew B., but always under "the express condition of his continuing to profess the Roman Catholic religion, and failing the said B., by death or abandoning the said religion, then to my own nearest heir professing the Roman Catholic religion, and to the heirs and assignees whomsoever of my said disponees." B., who survived A., and throughout his life professed the Roman Catholic religion, has died intestate, leaving a son C., who is a member of the Protestant Church. The property is claimed by C. as heir of B., and by D. as nearest heir of A. professing the Roman Catholic

religion. Which of them is entitled to succeed, and on what principle does the question depend ?

65. A., by *mortis causa* disposition containing clauses of absolute warrandice, disponed lands to C. his younger son, and by another deed of same date disponed his whole other estates to B. his eldest son, under burden of paying all debts due by him at the time of his death. A. subsequently contracted a debt partly on the security of the lands disponed to C. After A.'s death, C. claimed relief from B. of the whole debt secured over the lands. Was this claim well or ill founded, and on what principle ?

66. State the nature and effect of—(*a*) a postponing, and (*b*) a suspending condition annexed to a legacy, and give an example illustrative of the principle in each case.

67. A testator directed his trustees to convey certain lands to B. What is necessary to enable B. or his heir to grant a valid assignation of the right under the settlement ?

68. In what different ways may conditions and provisions be constituted or continued real burdens on land, in feu rights, or dispositions thereof ?

69. A., after having granted a bond and disposition in security over certain subjects to B., who had not taken infeftment thereon, sold the subjects to C., who, without taking infeftment, sold them with absolute warrandice to D., to whom he assigned the open precept in the disposition by A. Thereafter, and before D. had been infeft in the subjects, B. took infeftment on the bond in his favour, and recovered from D., who thereupon claimed relief from C. Was the claim well founded or not, and why ?

70. To what extent would it be competent to A., who is infeft in fee simple, to constitute an effectual right of "life-rent allenarly" therein in favour of—(1) a series of persons, or (2) of a single person and his heirs in perpetuity ? Give the reason.

71. How far was it formerly necessary to make use of any special term or terms in a conveyance of heritage, whether in deed *inter vivos* or *mortis causa ?* By what statute or statutes were any alterations thereon made, and what were the alterations ?

72. A. grants to B. a bond of annuity for £250. A. dies intestate, leaving heritage of the value of £10,000, but which

yields only £150 per annum clear, and personal estate, also of the value of £10,000, but yielding £450 per annum. His heir and his executor are different persons. Which of them is primarily liable for payment of the annuity, and on what principle? If the heir pays the whole of the annuity, has he any claim of relief against the executor?

73. A., infeft in lands of X. on an *a me* disposition containing procuratory precept and usual clauses, but unentered, granted in 1856 a bond of disposition in security in ordinary form over said lands in favour of B., on which B. took infeftment, and obtained confirmation of the bond, but not of A.'s title. Thereafter A., having granted in 1856 a similar bond in favour of C., how ought C. to have feudalized his bond so as to claim a preference over B? Give the reason.

74. What was the law regarding land held on apparency, and under what statute? Can land still be held on apparency? If not, why not?

75. What, according to the nature of the deed, is the extent of the ordinary warrandice implied where none is expressed? What is meant by real warrandice, and under what circumstances and to what extent is real warrandice given effect to?

76. Describe briefly the provisions of the "Consolidation Act, 1868," in regard to the succession to heritable securities; and supposing that B. died intestate in 1887, infeft in a bond and disposition in security in ordinary form, how could the title of the successor thereto be completed?

77. What were the changes made respectively by—(1) the Infeftment Act of 1845, (2) the Titles Act of 1858, and (3) the Consolidation Act of 1868, in regard to the mode of feudalizing the title of a disponee in lands by infeftment or its equivalent?

78. A. feued to B. B. died infeft, leaving a son C., who expede special service to B., and took infeftment. C. died, leaving a son D., who, in 1857, obtained from A. a precept of *clare constat* as heir of C., and took infeftment. D. sold the subjects to X., who objects to the title. Wherein does the objection lie, and by what steps may it be remedied?

79. A. feued to B., and B. took infeftment. A. thereafter disponed *a me* to B., and B. recorded the disposition, but did not enter. B. died intestate, leaving a son C. State in detail how

he would have completed a title to, and reunited the estates—(1) prior to the Conveyancing Act of 1874, and (2) subsequent thereto.

80. A. disponed to B. in his contract of marriage—(1) his estate of X. to "B. in liferent for liferent only, and the heirs of the marriage in fee," and (2) his estate of Y. to "B. in liferent for liferent only, and the second son of the marriage in fee." Three sons were born of the marriage, E., F., and G., of whom E. and F. predeceased B., in infancy. State in detail how, on the death of B., you will complete the title of G. to both estates.

81. What is now required for the framing and completion of a strict entail? How may such an entail be terminated at common law, and how under the entail statutes?

82. What words have been recognised as sufficient to indicate that a superiority in the subject is conveyed?

83. In what cases is composition recoverable by poinding the ground?

84. State the general rules of accretion.

85. Give in their order the clauses of the ordinary disposition of lands held feu in 1850. State the changes, if any, made therein by the Titles to Land Act, 1858, and the further changes made by the Conveyancing Act of 1874.

86. A. took the title to a property, which he had bought, in name of himself A. in liferent, and his son in fee, with power to A. to sell or burden at any time without B.'s consent, and recorded the deed on a warrant in these terms. Supposing that A. had been afterwards sequestrated, how far could his creditors attach the estate; or, assuming that he died solvent, without exercising the reserved power, to what extent, if any, is it necessary for B. to make up any further title? State the reason.

87. An institute in a strict entail who is not also heir of investiture—

(1.) Possesses simply on the personal right.

(2.) Has registered, but not feudalized the entail.

(3.) Has feudalized, but not registered the entail.

To what extent, if any, can his creditors attach the estate in these circumstances? Give the reason.

88. A. infeft, agreed by minute of sale to sell certain lands

to B. Supposing that A. either refused to complete the transaction by granting a conveyance, or, that having died before having done so, his heir also refused, by what steps could B. in either case have acquired a title prior to 1847, and how would he do so now?

89. A. entered publicly with the Crown, disponed *a me vel de me* to B. B. took infeftment and died unentered. How would B.'s heir C. have completed a public title prior to 1847, how could he have done so after 1847, and how could he do so now? Give in the latter case alternative modes when competent.

90. What is essential for the valid constitution of a reserved money burden on land? How was it transferred *inter vivos* to a third party, and his rights thereto perfected prior to 1874, and how subsequent thereto?

91. What is the effect of an obligation granted by a minor who has curators, but without their consent? And, supposing that he has no curators, to what extent can he validly dispose of his estate, heritable or moveable, by deeds *inter vivos* or *mortis causa?*

92. To what extent is it competent for the granter of any deed, ordinary or privileged, or for the witnesses to it, to sign by initials or by mark?

93. State briefly the distinction between—(1) homologation, (2) adoption, and (3) *rei interventus* in validating defective deeds, and give an illustration showing the class of deeds to which they are respectively applicable.

94. What is requisite to entitle a cautioner to the benefit of the septennial limitation; and supposing that he is entitled to the benefit, what may deprive him of it?

95. How far have arbiters an implied power where none is given in the submission—(1) to name an oversman, (2) to prorogate the submission, (3) to dispose of a part only of the subject referred, (4) to award expenses, (5) to stipulate for remuneration or decern for their own fees?

96. Mention in what, in earlier feudal times, "proper investiture" and in what "improper investiture" consisted, and trace the connection between the latter and the charter of modern times.

97. Explain—(1) the nature and effect of "litigiosity" as affecting the purchaser of a property; (2) mention how it was

created prior to the Consolidation Act, 1868, and how it could then be guarded against; and (3) state how it is created now.

98. A. infeft on a bond and disposition in security in ordinary terms, died intestate in 1860. Give the alternative methods by which his heir X. could have made up a title to the bond at that date, and those available to him in 1880, supposing that he had delayed completion of his title till then.

99. To what extent can leases of any kind be assigned when the lease itself is silent on the subject?

100. In whom is the fee (distinguishing, where necessary, between immediate, fiduciary, or ultimate) in the following destinations of heritage occurring in contracts of marriage?—

(1.) To A. and B. in conjunct liferent, and to their heirs in fee.

(2.) To A. in liferent, for liferent only, and to his heirs and bairns in fee. (*a*) A. dies, leaving two sons X. and Y. (*b*) A. dies without issue.

(3.) To A. in liferent, and to his son B. and any children to be born of his second marriage, and the survivors and survivor of them in fee.

101. What are the respective rights of liferent and fee of the parties called in the following destinations to strangers?—

(1.) To A. in liferent, and his heirs in fee.

(2.) To A. in liferent, and the heirs of B. in fee.

(3.) To A. and B. in conjunct fee and liferent, and their heirs.

(4.) To A. and B. jointly, and the survivor, and their heirs.

(5.) To A. and B. jointly, and to B., if he survives, and his heirs; and—(*a*) B. survives, (*b*) B. predeceases.

102. A. infeft on a Chancery precept, died intestate, leaving a son X.; how could he have completed a title in 1846, how in 1866, and how now, giving the alternative modes?

103. To what extent do provisions granted—(1) by a husband in favour of his wife, or (2) by a father in favour of his children, by post-nuptial settlement, exclude his wife and children from falling back upon their legal rights, although these have been barred; or how far will such provisions entitle either wife or children to compel fulfilment by the granter, or to compete with the granter's creditors?

104. Explain and give an illustration of the *conditio si sine liberis decesserit*; and, supposing that in a bond of provision for £10,000, granted by A. to his children, B., C., D., and E., with a substitution to the survivors, in case of the death of any without issue, on A.'s death, predeceased first by B. leaving two children, and then by E. without issue, how will the provision be divided?

105. Supposing that A., having acquired lands from B., on a disposition with an *a me* holding, wanted to feudalize his title, by what steps could he have done so without judicial procedure in 1870, supposing that his superior would not complete a title? How could he do so now?

III. COURT OF SESSION PRACTICE.

1. Mention some actions that are only competent in the Court of Session.

2. A. in building encroaches on B.'s property. What is B.'s remedy?

3. What is the nature and form of an action raised when a deed is lost?

4. How is jurisdiction founded against a foreigner?

5. What is the effect of a decree in an action of maills and duties, and to whom is such an action competent?

6. Explain nature and effect of a furthcoming.

7. State circumstances in which a decree in absence may have the effect of a decree *in foro*.

8. Explain nature and effect of protestation.

9. State the circumstances in which it is necessary to sist a mandatory, and the object of doing so.

10. Should a party, either pursuer or defender, fail to sist a mandatory after being ordered to do so, what course is open to opposite party?

11. What is meant by the *partibus?*

12. What is the proper way to recover documents for a trial?

13. In what circumstances is a party entitled to raise an action of multiplepoinding?

14. State the procedure in an application for the appointment of a *curator bonis* up to the time of extract.

15. State the rule as to lodging of documents—(*a*) in a jury trial, and (*b*) in a proof before a Lord Ordinary.

16. In an action of damages for wrongous arrestment, what is necessary to be libelled in order to make a relevant action?

17. How far is a pursuer, who recovers less than £5 of damages from a jury, entitled to his expenses?

18. Explain the circumstances and mode in which an exception may be taken at a jury trial to the charge of the judge.

19. Explain the form of an appeal to the Court of Session from a judgment of the Sheriff, and state the time within which such an appeal may be taken.

20. What is reconvention?

21. When is reponing against a decree in absence incompetent?

22. What is defender's remedy when a pursuer fails to call his summons on the expiry of the *induciæ?*

23. A. has a right of way through the lands of B., which B. endeavours to obstruct. How should A. vindicate his rights?

24. Who is called nominal raiser in a process of multiplepoinding?

25. What are the grounds on which, after a verdict by a jury, a new trial can be applied for?

26. What is the difference between a decree in absence and a decree by default?

27. Explain the difference between the form of procedure in an ordinary petitory action and in an action of reduction, from the calling of the summons till the closing of the record.

28. When, at a jury trial, an unstamped deed is tendered in evidence, what is necessary to prevent its rejection?

29. State the conditions and limitations under which an amendment of a summons may be allowed in an undefended action.

30. Explain shortly the nature of a declaratory action, and the circumstances in which it is competent.

31. How can a company, not incorporated, sue and be sued?

IV. SHERIFF COURT PRACTICE.

1. What is the jurisdiction of the Sheriff Court in matters relating to heritable right and title?

2. When, and in what cases, can an agent move for continuation of a cause for payment of his expenses?

3. What is now the law regarding imprisonment for debt?

4. In what circumstances, and to whom, is an appeal competent during course of process before Sheriff-Substitute?

5. Give the steps of process, and the time for each, before Sheriff-Substitute.

6. How is a ship arrested to found jurisdiction against a foreigner?

7. What is the proper form of suing by unregistered joint-stock companies?

8. Is it competent to have a Sheriff Court action tried before a jury? If so, what actions, and how is object effected?

9. What is the object of arrestment *ad fundandam jurisdictionem?* State the procedure.

10. What is a proof in replication? How is it applied for, and under what circumstances is it allowed?

11. What was, under the Sheriff Court Act, 1853, the period of charge on an extract decree in an ordinary action? What change has been made on that, and by what authority?

12. Can the Sheriff-Substitute or Sheriff correct an incidental error in an interlocutor after it is published? Explain their respective powers with regard thereto.

13. Explain the circumstances, if any, and the procedure, under which a wife may, in a Sheriff Court, obtain all the advantages of a decree of separation in the Supreme Court.

14. What is a *meditatione fugæ* warrant, and when can it be executed?

15. Describe the steps in the ordinary process in the Sheriff Court up to the time of the decision by the Sheriff-Substitute on the merits. Presume no appeals and no preliminary defences.

16. What is an action for constitution of a debt, and under what circumstances is it used?

17. Under what circumstances can a Sheriff remove a pro-

prietor from subjects for non-payment of the feu-duty, and when can the decree be purged?

18. With regard to witnesses, at what age is it the practice to require a witness to take an oath?

19. Under what circumstances, and how, may a Sheriff's jurisdiction be prorogated?

20. Are actions of reduction competent in the Sheriff Court? and can objections to a deed or writing founded on be made effectual in the Sheriff Court, and if so, how?

21. What extension of the Sheriff's jurisdiction was made by the Sheriff Courts (Scotland) Act, 1877?

22. A., who resides and has resided for more than a year in the county of X., and carries on business, and has carried on business for more than a year, in the county of Y., owes B., who resides in the county of Z., £50. Mention the various steps of procedure which B. must take in order to obtain sequestration of A.'s estates without his consent. To what Court should B. apply for sequestration?

23. State the circumstances in which decrees in absence have the effect of decrees *in foro*.

24. A. holds a bond and disposition in security over a heritable security belonging to B. B.'s estates are sequestrated on 1st November 1887, and at that date arrears of interest on the sum in the bond, for two years, are due, in addition to the current half-year's interest. What proceedings (besides proceedings for sale of the subjects) can A. raise to recover payment of interest? Can A. recover payment of all the arrears of interest in procedure he adopts? On what ground can it be applied for? What should the application set forth?

V. CRIMINAL LAW.

1. Explain the difference in effect of the desertion of a criminal diet *simpliciter* and a desertion *pro loco et tempore*. Up to what time is a desertion *pro loco et tempore* competent?

2. In what class or classes of crime is the aggravation of habit and repute admitted as an element against the prisoner; and what must be shown in order to establish it?

3. What is an irregular marriage by the law of Scotland; and

what difference, if any, is made on the crime of bigamy by both, or either, of the marriages being irregular?

4. When is a prisoner said to "thole an assize," and what difference is made by his doing so on the subsequent proceeding of the prosecutor?

5. What is the crime of plagium? Can it be aggravated by a previous conviction of ordinary theft?

6. Under what conditions, if at all, may a private person insist in a prosecution for crime?

7. A. was tried before an inferior court for an assault upon B., was found guilty, and was sentenced to imprisonment. B. shortly thereafter died in consequence of the injuries he had received in the assault. Can A., in these circumstances, be competently tried before the High Court on a charge of having murdered B.? State reason.

8. How may previous conviction of crime, before a Court in England, be proved before a Scotch Court, against a party accused of a similar crime committed in this country?

9. Under Prevention of Crimes Act, 1871, what is the power of Sheriff, in summary trials, for assaults on the police?

10. When authorities are made aware of a crime, some time after it has been committed, what proceedings are taken, and by whom, in order to punish the criminal?

11. Can a police officer execute a warrant of arrestment against a person in another jurisdiction without endorsation?

12. What right to challenge jury has a prisoner?

13. In criminal prosecutions, after commencement of trial, can libel be amended; and if so, under what circumstances, and to what extent?

14. By whom, in what circumstances, and at what stage of a criminal trial, can a restriction to an arbitrary punishment be got?

15. What are the *inducicæ* on a criminal libel before a Sheriff and jury, and on a summary complaint?

16. What pleas are competent in bar of a criminal trial, and how are they dealt with when made?

17. How are previous convictions proved in the criminal courts?

18. What procedure must a person dissatisfied with an inferior judge's determination, in a cause brought under the Summary

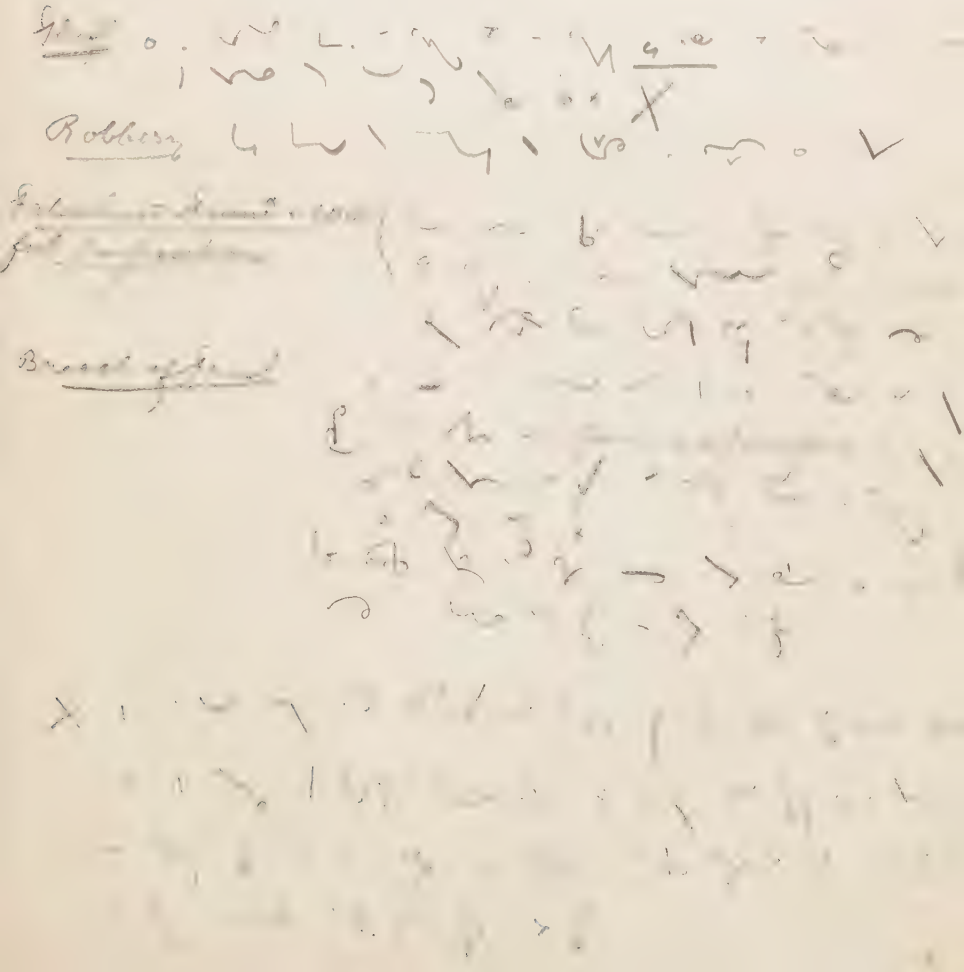
Procedure Act, 1864, adopt, in order to have the determination reviewed by a superior Court?

19. What changes have recently been made by statute in regard to a proof of previous convictions, and the stage in the proceedings at which evidence of such convictions is brought before the Court?

20. What are special defences? and what procedure must the person accused adopt, if he means to state a special defence, and bring evidence to support it?

21. What assaults, partaking of the character of attempts to murder, are by statute capital offences, and are they now?

22. May a husband or a wife give evidence against each other in a criminal case? Is there any exception to the rule?



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